

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

IN THE MATTER OF:

Western Mineral Products Superfund Site
Omaha, Nebraska

W. R. Grace & Co.-Conn.,

Respondent

U.S. EPA Region 7
Docket No. CERCLA-07-2014-0004

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

ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR REMOVAL ACTION

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Appendix A: Western Mineral Products Superfund Site Map

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and W. R. Grace & Co.-Conn. (“Respondent” or “Grace”). This Settlement Agreement provides for Site characterization to identify the extent of contamination, performance of a removal action by Respondent, and the payment of certain response costs incurred by the United States at or in connection with the “Western Mineral Products Superfund Site” (the “Site”) generally located at 3520 I Street in Omaha, Douglas County, Nebraska.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622, as amended (“CERCLA”).

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

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement 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 Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

5. Respondent filed for protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court), In re W. R. Grace & Co. et al., No. 01-01139 (JKF). On January 31, 2011, the Bankruptcy Court entered an order confirming the *First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of W. R. Grace & Co., et al., the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants’ Representative, and the Official Committee of Equity Security Holders as Modified Through December 23, 2010* [Docket No. 26368] (as it may be amended or supplemented, the “Plan”). On February 3, 2014, the Plan became effective and Grace and its affiliates emerged from bankruptcy protection. In connection with its reorganization, Grace entered into a “Settlement Agreement Resolving the United States’ Proofs of Claim Regarding Certain Environmental Matters” (the “Bankruptcy Settlement Agreement”), which included claims of the EPA relating to liability for environmental remediation. Following EPA’s determination, pursuant to Section XXIX (Notice of Completion of Work), that the Work has been fully performed in accordance with this Settlement Agreement, this Site will be treated and liquidated as an allowed general unsecured claim subject to the terms and conditions of the Bankruptcy Settlement Agreement.

II. PARTIES BOUND

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

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

III. DEFINITIONS

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

- a. "Action Memorandum" shall mean the EPA Enforcement Action Memorandum relating to the Site signed on June 19, 2014, by the Regional Administrator, EPA Region VII, or his/her delegate, and all attachments thereto. The Action Memorandum is included as Appendix B.
- b. "ATSDR" shall mean the Agency for Toxic Substances and Disease Registry.
- c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- d. "Contaminant" or "contamination" shall have the same meaning as set forth in 42 U.S.C. § 9601(33).
- e. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXI.
- g. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.

- h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs from the Effective Date of this Settlement Agreement in reviewing or developing plans, reports and other deliverables pursuant to this Settlement Agreement, in overseeing the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 48 (including but not limited to, costs and attorneys fees and any monies paid to secure access, including but not limited to the amount of just compensation) Paragraph 58 (emergency response), and Paragraph 85 (work takeover).
- i. "Hazardous Substance" shall have the same meaning as set forth in 42 U.S.C. § 9601(14).
- j. "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.
- k. "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.
- l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- m. "Parties" shall mean EPA and Respondent.
- n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the day preceding the Effective Date of this Settlement Agreement, plus Interest on all such costs through such date. Past Response Costs shall also include all costs of any ATSDR investigation of this Site that were billed to the site-specific billing code of A7P8 (but shall not include ATSDR's costs that were satisfied by the Bankruptcy Settlement Agreement) paid through the day preceding the Effective Date of this Settlement Agreement, plus Interest on such costs through such date.
- o. "Respondent" shall mean the W. R. Grace & Co.-Conn.
- p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

- q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Administrative Settlement Agreement and Order on Consent and any appendix, this Administrative Settlement Agreement and Order on Consent shall control.
- r. "Site" shall mean the Western Mineral Products Superfund Site, encompassing approximately one acre, located at 3520 I Street in Omaha, Douglas County, Nebraska, and depicted generally on the map attached as Appendix A.
- s. "State" shall mean the State of Nebraska.
- t. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.
- u. "Waste Material" shall mean: (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).
- v. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

9. The Site is located at 3520 I Street in Omaha, Douglas County, Nebraska. The Site consists of one building with a small parking lot to the west and a loading dock to the north. North of the loading dock area is an open field approximately one (1) acre in size. The Site is currently owned and operated by The Gutter Company which specializes in fabrication and distribution of guttering. Approximately four (4) employees are based out of this business.

10. The Site is bound by a parking lot and industrial area to the east, I Street to the south and railroad tracks to the north and west. The Site is located in a light commercial area and is depicted in Appendix A.

11. In 1948, Western Mineral Products acquired property within the footprint of the Site, and it is believed that plant production began that year.

12. Western Mineral Products was a licensee of the Zonolite Company beginning in the 1930s. Zonolite later acquired a minority interest in Western Mineral Products. Grace acquired the Zonolite Company in 1963, and as part of that acquisition acquired the minority shares of Western Mineral Products. In 1966, Grace and Western Mineral Products merged with Grace remaining as the surviving member. After this merger, Grace owned 100% of all Western Mineral Products facilities.

13. The vermiculite expansion facility located at the Site operated from approximately 1948 until May 1989. After May 1989, vermiculite expansion ceased at the facility.

14. Grace sold the portion of the Site it owned to The Gutter Company in 1991.

15. Grace operated two (2) vermiculite furnaces and one (1) perlite expanding furnace at the Site. Vermiculite is a naturally-occurring mineral composed of shiny flakes, resembling mica. When heated to a high temperature, flakes of vermiculite expand like an accordion by as much as 8-30 times their original size. The expanded vermiculite is a light-weight, fire-resistant, and odorless material and has been used in numerous products, including insulation for attics and walls. The expanded vermiculite produced at the Site was used to make several vermiculite-based products including light-weight concrete aggregates, structural fire proofing, masonry insulation, attic insulation, and horticultural soil conditioners.

16. The process of vermiculite expansion at the Site included several steps. Vermiculite concentrate was unloaded from railroad hopper cars by a conveyer and elevator to storage areas. Vermiculite concentrate was transferred from the storage areas to the furnace feed hopper and then fed to the expanding furnace by an elevator. Vermiculite concentrate was heated to approximately 2,000 degrees Fahrenheit causing the vermiculite to expand, or pop. The expanded vermiculite fell from the furnace through a discharge chute to the finished product elevator. The expanded vermiculite passed over an inclined vibrating screen to separate rock from expanded product. The final product was bagged from a bag hopper.

17. The vermiculite concentrate was shipped from the Libby, Montana vermiculite mine. Libby vermiculite concentrate is known to contain measurable quantities of asbestos. The process of expanding Libby vermiculite at the Site caused the release of asbestos into the environment. In 1977, the two vermiculite furnaces were retired and the perlite expanding furnace was installed. It included a baghouse with the predominate purpose of capturing asbestos releases from that furnace.

18. The facility operated as a vermiculite exfoliation plant, processing approximately 161,112 tons of Libby vermiculite concentrate between 1967 and 1989.

19. On April 19, 2000, Ecology and Environment, Inc., an EPA contractor, conducted a Site visit. On the north side of the facility, where a rail spur once existed, EPA discovered the presence of mica flakes as well as an indication of expanded vermiculite. EPA collected five (5) samples of dust and soil for laboratory analysis by polarized light microscopy ("PLM") and transmission electron microscopy ("TEM"). Four (4) of the samples contained less than one (1) percent (%) asbestos, and one (1) sample contained no detectable levels of asbestos.

20. On October 14, 2004, the United States Department of Health and Human Services, Agency for Toxic Substances and Disease Registry ("ATSDR") completed a Health Consultation Report which evaluated the Site sampling data to determine the exposure risks of the former employees of the Western Mineral Products facility, neighbors of the Site, and current occupants at the Site. The

Health Consultation Report concluded that former employees of the Western Mineral Products facility and their families were likely exposed to hazardous levels of Libby asbestos in the past. The Health Consultation Report concluded that insufficient information was available to determine the extent to which people living in the neighborhood of the plant were exposed to Libby asbestos in the past from ambient air pathways, residential indoor pathways, residential outdoor pathways, or waste pile pathways. The Health Consultation Report concluded that it is unlikely that current Site occupants were exposed to hazardous levels of Libby asbestos, but further sampling may be necessary to confirm that conclusion. The Health Consultation Report concluded that contamination present around the plant could pose a public health hazard if disturbed.

21. In October 2007, the Government Accountability Office (“GAO”) issued a Report to Congressional Requesters which evaluated EPA’s cleanup approach for sites associated with the Libby, Montana mine. The GAO Report recommended that EPA should determine the manner and extent to which newly available sampling and analysis techniques should be used to re-evaluate the threat that the sites receiving Libby vermiculite concentrate may pose to human health. The GAO Report also recommends that EPA determine whether any additional sites that received the Libby vermiculite concentrate need to be cleaned up.

22. On April 16, 2010, EPA and Seagull Environmental Technologies, Inc., completed a removal assessment at the Site. As part of the removal assessment, air, soil, and interior dust samples were collected to determine the potential for human health effects that might be associated with past, current, and future exposure to asbestos related to historic processing operations conducted at the Site.

23. During the removal assessment, air samples, dust samples, and surface soil samples were collected. The samples were analyzed in laboratories.

24. Five (5) interior and five (5) exterior air samples were collected by activity-based sampling (“ABS”). Air samples were also collected from three (3) stationary locations inside the building. The ABS involved two members of the field team equipped with Gilian personal sampling pumps fitted with in-line, pre-loaded filter cassettes (0.80 micron). The field team equipped with the personal sampling pumps conducted activities that included sweeping floors, collecting and disposing of scrap metal, and moving various materials throughout the building. The stationary samples were collected with Gilian AirCon2 sampling pumps fitted with in-line, pre-loaded filter cassettes (0.80 micron) suspended in the breathing zone at a height of five (5) feet above ground surface.

25. Three (3) dust samples were collected from interior locations during site activities. The dust sampling included the use of Gilian personal sampling pumps with in-line pre-loaded filter cassettes (0.80 micron) to implement a micro-vacuum technique. A short piece of disposable polyethylene tubing was attached to the inlet of the cassette to collect surface dust.

26. Seven (7) surface soil samples were collected from areas potentially impacted by historic Site operations. Several sample locations were selected because they contained visual mica flakes,

indicative of Libby, Montana vermiculite. Each surface soil sample was a multi-aliquot composite collected no deeper than two (2) inches below ground surface using a stainless-steel spoon.

27. Analytical results reveal the following:

- a. Concentrations of up to 0.0378 structures per cubic centimeter (“s/cc”) of asbestos were detected in an interior air sample exceeding the updated Site-specific screening level of 0.0063 s/cc for indoor workers;
- b. Concentrations ranging from 0.0048 to 0.0057 s/cc of asbestos were detected in exterior air samples which were below the updated Site-specific screening level of 0.0070 s/cc for outdoor workers;
- c. Concentrations ranging from 8,734.23 to 38,501.93 structures per square centimeter (s/cm^2) of asbestos were detected in dust samples; and
- d. Concentrations of up to 3.50% of asbestos were detected in a soil sample which exceeds the definition of asbestos-containing material (“ACM”) which is any material that contains greater than 1% asbestos.

28. Asbestos is a listed hazardous substance. 42 U.S.C. § 9601(14), 40 C.F.R. § 302.4.

29. Human and environmental exposure to asbestos, the hazardous substance, pollutant and/or contaminant, found at the Site may result in toxicological effects. Breathing asbestos may increase the risk of malignant mesothelioma (a cancer of the lining of the lung and other internal organs), lung cancer (cancer of the lung tissue also known as bronchogenic carcinoma), and noncancer effects.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

30. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Western Mineral Products Superfund 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 a “hazardous substance” 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 a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- 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 removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

32. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days after the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least thirty (30) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor and provides to Respondent its reason(s) for such disapproval, Respondent shall retain a different contractor and shall notify EPA of that contractor’s name and qualifications within thirty (30) days after EPA’s disapproval.

33. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement:

Robert J. Medler
W. R. Grace & Co.-Conn.
6401 Poplar Ave., Suite 301

Memphis, Tennessee 38119
Telephone: 901-820-2024
Facsimile: 901-820-2061
Robert.J.Medler@grace.com

To the greatest extent possible, Respondent's Project Coordinator, or his agent, shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator and/or his agent. If EPA disapproves of the designated Project Coordinator and/or his agent and provides to Respondent its reason(s) for such disapproval, Respondent shall retain a different Project Coordinator and/or agent and shall notify EPA of that person's name, address, telephone number, and qualifications within thirty (30) days of Respondent's receipt of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

34. EPA has designated Joe Davis of EPA Region VII's Superfund Division, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to:

Joe Davis
Superfund Division
U.S. Environmental Protection Agency, Region VII
8600 Underground Road, Pillar 253
Kansas City, Missouri 64161
Telephone: 913-551-7909
Facsimile: 913-551-9909
davis.joe@epa.gov

35. EPA and Respondent shall have the right, subject to Paragraph 33, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

36. Respondent shall perform, at a minimum, all actions necessary to implement the Work set forth in this Section and the Action Memorandum. The actions to be implemented generally include, but may not be limited to the following:

37. Coordinate with the OSC to assess the layout of the Site and determine required Site activities, equipment, personnel, and logistics. Develop a Sampling and Analysis Plan ("SAP") and Quality Assurance Project Plan ("QAPP") consistent with Paragraph 38 below. Prepare a SAP Report consistent with Paragraph 39 below. Prepare a Removal Action Work Plan that details plans for the removal and disposal of soil where asbestos may be present in the soil and the indoor environment at the Site at unacceptable levels as defined by Paragraph 40 below. Submit a Final

Report consistent with Paragraph 46 below.

38. SAP and QAPP: Within thirty (30) days of the Effective Date, Respondent shall submit to EPA a SAP and QAPP, which will define the extent of asbestos contamination for the outdoor and indoor environment and estimate exposure potential for current and any currently anticipated future land use. The SAP and QAPP shall be consistent with the EPA Framework for Investigating Asbestos Contaminated Superfund Sites, OSWER Directive 9200.0-68 (Sept. 2008, U.S. EPA, 2008). The SAP and QAPP will be subject to EPA approval, disapproval, or approval with modifications pursuant to Paragraph 41. Upon approval or approval with modifications by EPA, Respondent shall implement the plan according to the schedule contained therein. The QAPP shall be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" and (EPA/240/B-01/003, March 2001, reissued May 2006), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002). The SAP shall:

- a. Identify the extent of outdoor asbestos contamination and include a plan to collect soil samples which will estimate the nature and extent of contamination up to the limits of detection of the best available method (e.g. CARB 435 Analysis) and augmented by activity-based sampling ("ABS"). Soil samples will be analyzed using "Standard Operating Procedures of CARB 435 Analysis," 400 point count. The 0.25% represents the lowest reliable reporting level of the method. This method can be used for screening in order to establish presence of asbestos structures, but cannot be used to establish absence of asbestos structures or to meet risk-based clean-up goals; and
- b. Identify the extent of indoor asbestos contamination. Include a plan to collect air samples which will estimate the nature and extent of asbestos contamination. Evaluation of the indoor air will be determined by the site-specific, risk-based indoor air clearance standard of 0.0063 s/cc (PCME fibers only) as measured during aggressive ABS;
- c. Identify applicable or relevant and appropriate requirements ("ARAR") under federal environmental or state environmental or facility siting laws; and
- d. Include an expeditious schedule to perform the work described above.

39. SAP Report: Within forty-five (45) days after completion of the SAP, Respondent shall submit for EPA review and approval a SAP Report summarizing the actions taken and results of the SAP. The SAP Report will be subject to EPA approval, disapproval, or approval with modifications pursuant to Paragraph 41. The SAP Report shall include, but not be limited to, the following:

- a. Description of the actions that have been taken to comply with each element of the SAP;

- b. Copies of all results of chemical or physical analyses conducted while implementing the SAP, including the results of field screening or other “on-site” analyses;
- c. A table documenting the analytical results of each sample collected including a comparison of the analytical results to any approved screening levels; and
- d. Discussion of the proposed removal action goals for the Site.

40. Removal Action Work Plan: Within thirty (30) days of EPA approval of the SAP Report, Respondent shall submit to EPA a Removal Action Work Plan (“RAWP”). The RAWP shall be consistent with the EPA Framework for Investigating Asbestos Contaminated Superfund Sites, OSWER Directive 9200.0-68 (Sept. 2008, U.S. EPA, 2008). The RAWP will be subject to EPA approval, disapproval, or approval with modifications pursuant to Paragraph 41. Upon approval or approval with modifications by EPA, Respondent shall implement the plan according to the schedule contained therein. The RAWP shall:

- a. Identify where warning signs and fencing will be erected to prevent access to areas where asbestos is present in the soil and building interiors;
- b. Outline a two-stage removal by excavation of asbestos contaminated soil and waste:
 - i. The first stage of excavation shall include all soil or waste containing asbestos greater than or equal to 0.25% using “Standard Operating Procedures of CARB 435 Analysis,” 400 point count. As the 0.25% represents the lowest reliable reporting level of the method, a sample reported as less than this detection limit cannot be used to establish absence of asbestos structures or to meet risk-based clean-up goals;
 - ii. Once the soil concentration of asbestos is less than 0.25%, ABS shall be conducted in the excavation area. The site-specific, risk-based ABS clearance standard for external air is 0.0070 s/cc (PCME fibers only); and
 - iii. Further excavation of soil may be required if external air clearance standard is not met. Excavation and confirmatory ABS shall be continued until risk-based remediation goals are achieved or the parties agree that post-removal site controls (PRSCs) are needed and appropriate.
- c. PRSCs (e.g. caps and barriers) and institutional controls (e.g. covenants, zoning controls, deed notices) may be implemented based on the ABS results if such sampling shows the Site does not allow for unlimited and unrestricted use and that further excavation is not practicable. The PRSCs must be sufficient to ensure protectiveness;

- d. If indoor air samples did not meet the site-specific, risk-based indoor air clearance standard of 0.0063 s/cc (PCME fibers only) as identified during Respondent's investigation, specify actions to address building cleanup and removal of asbestos contamination within the building. Aggressive ABS shall be conducted after building cleanup and asbestos removal is complete to confirm that the site-specific, risk-based ABS clearance criterion for indoor air of 0.0063 s/cc (PCME fibers only) has been met;
- e. Specify proper characterization, transportation and off-site disposal of the contaminated soil and any waste generated during building cleanup, as well as backfilling of excavated areas and Site restoration;
- f. Ensure all personnel working on the Site meet asbestos certification requirements of the Health and Safety Plan ("HASP");
- g. Specify any other investigations, studies, and response actions as Respondent may propose and EPA may approve in accordance with this Settlement Agreement; and
- h. Include an expeditious schedule to perform the work described above.

41. Approval/Disapproval.

- a. EPA may approve, disapprove, require revisions to, or modify any work plan or report in whole or in part. If EPA requires revisions within the scope of the Work, Respondent shall submit a revised work plan or report within thirty (30) days after EPA's notification of the required revisions. Respondent shall implement the work plans as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the work plans, schedules, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.
- b. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the work plans developed hereunder until receiving written EPA approval pursuant to Paragraph 41(a).

42. Health and Safety Plan. Within thirty (30) days of the Effective Date, Respondent shall submit to EPA for review and comment a HASP that ensures the protection of the public health and safety during performance of on-site work under this Settlement Agreement. EPA may approve, disapprove, require revisions to, or modify the HASP in accordance with Paragraph 41. The HASP shall be prepared in accordance with EPA's Standard Operating Safety Guide, PUB 9285.1-03, PB 92-963414, June 1992. In addition, the HASP 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 HASP shall also include contingency planning.

Respondent shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the performance of the Work.

43. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001; Reissued May 2006),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.
- b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than fifteen (15) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent’s implementation of the Work.

44. Post-Removal Site Control. In accordance with the RAWP schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

45. Reporting.

- a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every thirtieth (30th) day after the date of receipt of EPA's approval of the SAP Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. 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.
- b. Respondent shall submit one (1) copy of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan to the OSC identified in Paragraph 34. Respondent shall also submit such documents in electronic form.

46. Final Report. Within one hundred and twenty (120) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, 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 person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

47. Off-Site Shipments.

- a. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state (if required by that state) and to the On-Scene Coordinator.

However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
 - ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 47(a) and 47(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

48. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

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

X. ACCESS TO INFORMATION

50. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

51. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

52. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and the State with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

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

XI. RECORD RETENTION

54. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site,

regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

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

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

XII. COMPLIANCE WITH OTHER LAWS

57. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(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 Agreement 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. Respondent shall identify ARARs in the SAP Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

58. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and

Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, it shall report the incident to EPA's Regional Spill Line at (913) 281-0991. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

59. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 913-281-0991 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

61. Payment for Past Response Costs.

- a. Respondent shall reimburse EPA for all Past Response Costs not inconsistent with the NCP. Following the Effective Date of this Settlement Agreement, EPA will send to Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Within thirty (30) days following Respondent's receipt of such bill, Respondent shall reimburse EPA for such Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with the then-current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "A7P8", and the EPA Docket number for this action.
- b. At the time of payment, Respondent shall send notice that such payment has been made by email to the OSC, to the following e-mail address acctreceivable.cinwd@epa.gov, and to:

U.S. Environmental Protection Agency
Superfund Payments - CFC
P.O. Box 979076
St. Louis, Missouri 63197-9000

- c. The total amount to be paid by Respondent pursuant to Paragraph 61(a) shall be deposited by EPA in the Western Mineral Products Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

62. Payments for Future Response Costs.

- a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 64 of this Settlement Agreement.
- b. Respondent shall make all payments required by this Paragraph by EFT in accordance with the then-current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "A7P8", and the EPA docket number for this action.
- c. At the time of payment, Respondent shall send notice that payment has been made to by email to the OSC, the following address acctsreceivable.cinwd@epa.gov, and to:

U.S. Environmental Protection Agency
Superfund Payments - CFC
P.O. Box 979076
St. Louis, Missouri 63197-9000

- d. The total amount to be paid by Respondent pursuant to Paragraph 62(a) shall be deposited by EPA in the Western Mineral Products Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

63. In the event that the payment for Past Response Costs or Future Response Costs are not made within thirty (30) days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs and Future Response Costs shall begin to accrue on the date Respondent receives the bill and shall continue to accrue until the date of

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 Section XVIII.

64. Respondent may contest payment of any Future Response Costs billed under Paragraph 62 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall, within the 30-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62. Simultaneously, Respondent shall 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 Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five (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 62. 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 62. 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 XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

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

66. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including without limitation billings for Past Response Costs or Future Response Costs, it shall notify EPA in writing of the objection(s) within fourteen (14) days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal

negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

67. An administrative record of any dispute under this Section will be maintained by EPA. The record shall include the written notification of such dispute, statements of position, if any, and EPA's response thereto.

68. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of EPA Region VII's Superfund Division will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, 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.

XVII. FORCE MAJEURE

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

70. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

71. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the

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

XVIII. STIPULATED PENALTIES

72. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 73 through 74 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

73. Stipulated Penalty Amounts – Work (Including Payments). The following stipulated penalties shall accrue per violation per day for failure to submit the SAP, QAPP, SAP Report, RAWP, perform any Work as set forth in the SAP and/or RAWP, and for failure to pay Past Response Costs and Future Response Costs, required hereunder in a timely or adequate manner:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 7th day
\$2,000	8th through 30th day
\$3,000	31st day and beyond

74. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports (including progress reports called for in Paragraph 45(a) and the Final Report called for in Paragraph 46 hereunder) in a timely or adequate manner:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 7th day
\$1,000	8th through 30th day
\$3,000	31st day and beyond

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$100,000.

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section 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 Director of EPA Region VII's Superfund Division, pursuant to Paragraph 68 of Section XVI (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

77. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, 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. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

78. All penalties accruing under this Section shall be due and payable to EPA within thirty (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 XVI (Dispute Resolution). Respondent shall make all payments required by this Paragraph by EFT in accordance with the then-current EFT procedures to be provided to Respondent by EPA Region VII, and shall be accompanied by a statement referencing Respondent's name and address, the Site name, and the Site/Spill identifier "A7P8", and the EPA docket number for this action. Notice shall be sent to EPA as provided in Paragraph 61(b).

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

80. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

81. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 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 Section, except in the case of a willful violation of this Settlement Agreement, or

in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 85. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

82. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the payment of Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. liability for failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;

- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the investigation of the Site and billed to the site-specific billing code of A7P8, but shall not include ATSDR's costs that were satisfied by the Bankruptcy Settlement Agreement.

85. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

86. 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, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

87. These covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 84(b), (c), and (e)-(g), 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.

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

XXII. OTHER CLAIMS

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

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

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

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

92. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

93. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and

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

94. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

95. 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 XIX.

96. Effective upon signature of this Settlement Agreement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Section XV (Payment of Response Costs) and, if any, Section XVIII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 93 and that, in any action brought by the United States related to the “matters addressed,” such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXIV. INDEMNIFICATION

97. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of

litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

99. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the 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 the 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.

XXV. INSURANCE

100. At least seven (7) days prior to commencing any on-site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

101. Within thirty (30) days after the Effective Date, Respondent shall establish and maintain and provide a copy to EPA financial security for the benefit of EPA in the amount of \$100,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

102. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days after receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 101, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days after such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

103. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 101(e) or 101(f) of this Settlement Agreement, Respondent shall (a) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be \$100,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental

obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

104. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 101 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

XXVII. MODIFICATIONS

106. The OSC may make modifications to any plan or schedule in writing or by oral direction providing that such modification is consistent with the objectives of this Settlement Agreement. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

107. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator 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 OSC pursuant to Paragraph 106.

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

XXVIII. ADDITIONAL REMOVAL ACTION

109. If EPA determines that additional removal actions related to the Work as set forth in Section VIII (Work to Be Performed), and not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days after receipt of notice from EPA that additional

removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

XXIX. NOTICE OF COMPLETION OF WORK

110. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, payment of Future Response 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 Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. 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 Agreement.

XXX. SEVERABILITY/APPENDICES/COUNTERPARTS

111. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

112. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Appendix A (Western Mineral Products Superfund Site Map) and Appendix B (Action Memorandum and its appendices).

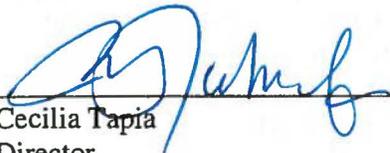
113. This Settlement Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

XXXI. EFFECTIVE DATE

114. This Settlement Agreement shall be effective upon the signature of the Director of EPA Region VII's Superfund Division.

The undersigned representatives of EPA certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

For the United States Environmental Protection Agency, Region 7



Cecilia Tapia
Director
Superfund Division
U. S. Environmental Protection Agency
Region 7

6-25-14
Date



Kelley Catlin
Assistant Regional Counsel
U. S. Environmental Protection Agency
Region 7

6/24/14
Date

The undersigned representative of W. R. Grace & Co.-Conn. certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party he or she represents to this document.

FOR RESPONDENT: W. R. Grace & Co.-Conn.

Karen E. Ethier
Karen E. Ethier
Vice President
Global Environment, Health and Safety
W. R. Grace & Co.-Conn.

JUNE 23, 2014
Date

**Appendix A:
Western Mineral Products Superfund Site Map**

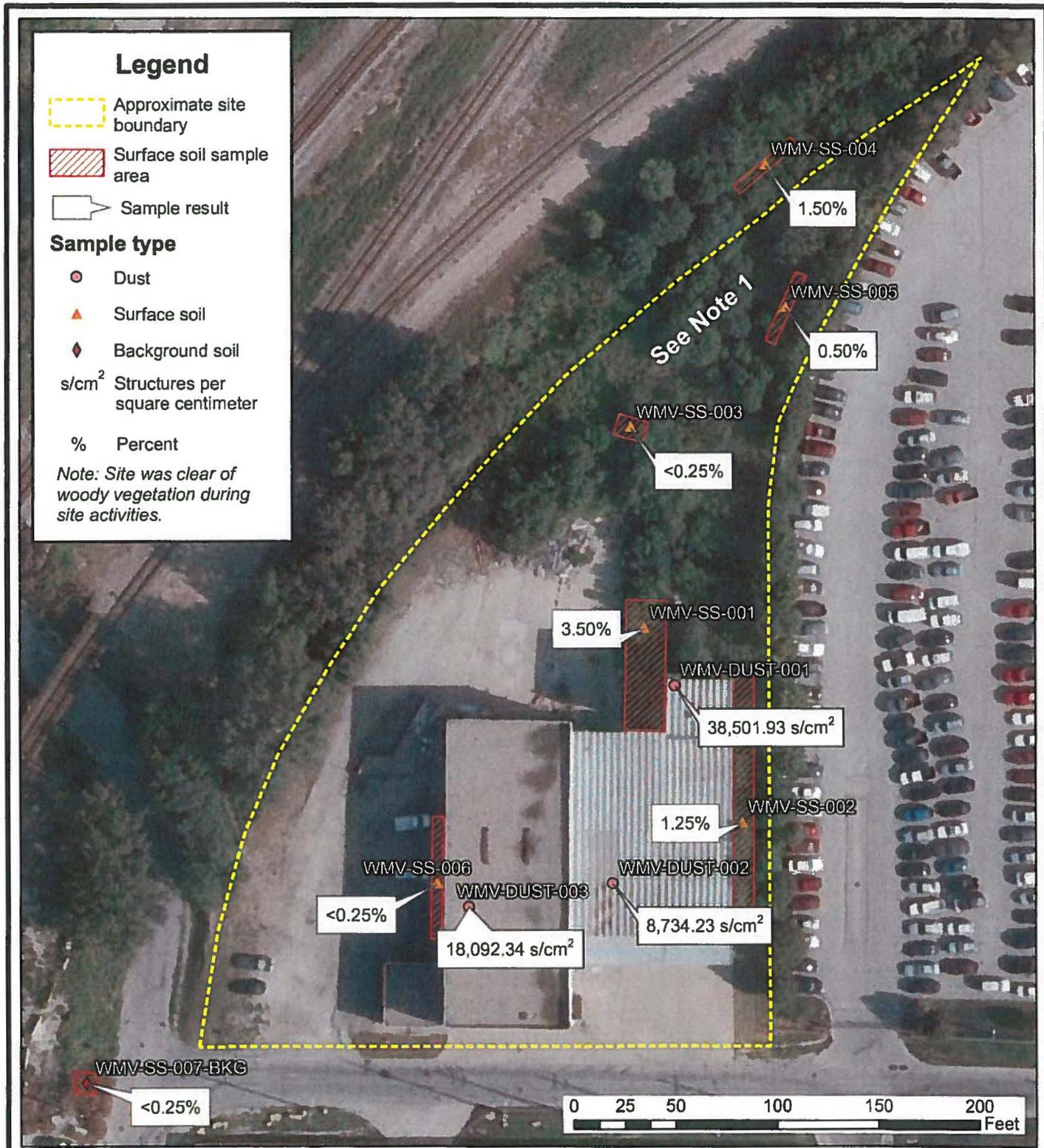


Figure 4
Dust and Surface Soil Sample Location Map

Western Mineral Products Site, Omaha, Nebraska

Seagull Environmental Technologies, Inc.

Source: U.S. Geological Survey



**Appendix B:
Action Memorandum**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

JUN 19 2014

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for a Removal Action at the Western Mineral Products/W.R. Grace Site, Omaha, Douglas County, Nebraska

FROM: Joe Davis, On-Scene Coordinator *for [Signature]*
Planning and Preparedness North Section

THRU: Dave Williams, Chief *[Signature]*
Planning and Preparedness North Section

TO: Cecilia Tapia, Director
Superfund Division

Site ID	A7P8
CERCLIS ID	NEN000703777
Removal Category:	Time-Critical
Nationally Significant:	Yes

I. PURPOSE

The purpose of this Enforcement Action Memorandum is to request and document approval of the proposed potentially responsible party (PRP)-lead time-critical removal action at the former Western Mineral Products/W.R. Grace Site located at 3520 I Street in Omaha, Douglas County, Nebraska (Site). Amphibole asbestos fibers present inside of the building and in soil at the Site, if not addressed by implementing the response actions selected in this Enforcement Action Memorandum, will continue to pose a threat to human health and the environment. There has been no use of the On-Scene Coordinator's warrant authority. The PRPs have expressed interest in actively participating in the cleanup action and are negotiating a Settlement Agreement and an Administrative Order on Consent with the U.S. Environmental Protection Agency.

As detailed below, the objective of this removal action is to protect public health or welfare or the environment by responding to the release of hazardous substances and pollutants or contaminants into the environment as presented by exterior surface soils and interior dust contaminated with asbestos at the Site. Contaminated soils that exceed method detection limits for asbestos will be excavated, transported and disposed of at a permitted facility. Asbestos contaminated dust on interior surfaces of the building will be cleaned by High-Efficiency Particulate Air (HEPA) vacuuming, wet wiping or other methods pre-approved by the EPA On-Scene Coordinator (OSC).



II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal site evaluation

A site visit conducted by the EPA in 2000 revealed the presence of visible mica flakes, as well as the identification of puffed vermiculite in an open area on the north side of the facility where a rail spur once existed. During the site visit, the EPA collected five composite samples of interior dust and exterior soil for laboratory analysis by polarized light microscopy (PLM) and transmission electron microscopy (TEM). Four of the samples contained detectible concentrations of asbestos fibers that ranged between 0.5 percent to 1 percent total asbestos, while the remaining sample contained no detectable levels of asbestos (Ecology and Environment 2001).

In an October 2008 Memorandum, the EPA Office of Solid Waste and Emergency Response (OSWER) directed the EPA Regional Removal Programs to further assess vermiculite sites that received asbestos-contaminated ore from Libby, Montana. The Memorandum provided guidance and a detailed process for accomplishing this task.

On April 13, 2010, the EPA Region 7 and the Superfund Technical Assessment and Response Team contractor conducted removal assessment sampling at the Western Mineral Products Site. The Removal Assessment Report is included in the Administrative Record for this Site. Removal assessment sampling included the collection of air (from both interior and exterior locations), interior dust and exterior surface soil samples. Sampling was conducted to determine the potential for human health effects that might be associated with past, current and future exposure to asbestos related to historic vermiculite processing operations at the Site. Analytical results determined asbestos was present in all of the sampled environmental media.

Prior to Site activities, the EPA Region 7 toxicologists reviewed the history of the Site and its current use, as well as use of the area surrounding the Site, to establish a site-specific screening level for asbestos in air for on-site workers of 0.0074 structures per cubic centimeter (s/cc). The action level is exposure-based and representative of a 10^{-4} cancer risk level.

During the removal assessment activities, 10 air samples were collected. Of those 10 air samples, five were collected from interior locations and five were collected from exterior locations outside the site building. For the air sampling, activity-based sampling (ABS) was conducted following a modified method based on the EPA Emergency Response Team Standard Operating Procedure #2084. During ABS sampling, two members of the field team were equipped with personal air sampling pumps fitted with in-line, pre-loaded filter cassettes (0.80 micron). Additional air samples were also collected from three stationary locations both inside and outside of the building. All sampling was conducted in accordance with the Framework for Investigating Asbestos-Contaminated Superfund Sites (OSWER Directive #9200.0-68, September 2008 [EPA 2008]).

ABS sampling was conducted to replicate routine daily activities at the site. During the interior sampling, field team personnel fitted with the personal air sampling pumps, conducted activities that included sweeping floors, collecting and disposing of scrap metal and moving various materials throughout the building. ABS activities conducted during the exterior sampling included walking around the site near trucks loading and unloading activities, collecting soil samples and moving pallets and other debris around the site.

No exterior air samples exceeded reportable concentrations. One interior air sample (WMV-PER-IND-002) (an ABS sample) contained a reportable asbestos fiber concentration of 0.0378 s/cc. This concentration exceeded the site-specific screening level of 0.0074 s/cc established by the EPA for workers at the Site. Three dust samples collected from interior locations contained concentrations of asbestos that ranged from 8,734.23 to 38,501.93 s/cm². Currently, no established regulatory standard for asbestos in dust exists; however, as a reference, asbestos concentrations ranging from 10,000 to 100,000 s/cm² are considered to be above background levels, while concentrations greater than 100,000 s/cm² are considered high and may present an exposure threat if the asbestos fibers are re-entrained into the air. In addition, seven surface soil samples (including a background) were collected during removal assessment activities. Four of the seven surface soil samples contained detectable concentrations of asbestos that ranged from 0.50 percent to 3.5 percent. Sample WMV-SS-001 contained the highest concentration, which was 3.5 percent. This sample was collected from an area north of the building, where vermiculite processing activities were thought to have been formerly conducted.

Sample results from this removal assessment determined asbestos was present in the interior air, interior dust and surface soil at the Site, and that a removal action to address the asbestos-contaminated media is warranted. While a primary focus of this removal action will be to remove exterior soil contaminated with asbestos, sampling information suggests that interior asbestos contamination may be contributing to exterior soil contamination. For this reason, it is recommended that building interior surfaces be cleaned in order to, among other things, prevent re-contamination of exterior soils.

2. Physical location

The Western Mineral Products Site is located at 3520 I Street in Omaha, Douglas County, Nebraska (see Figure 1). The geographic coordinates for the approximate center of the Site are 41.2167 degrees north latitude and 95.9655 degrees west longitude. The Site is bounded by industrial properties to the east and south, and railroad tracks to the north and west.

3. Site characteristics

The Site consists of one building with two segregated areas, with a small parking lot to the west and a loading dock to the north (see Figure 2). North of the loading dock area is an open field approximately one acre in size. At the time of the removal assessment, the north area had recently been cleared of woody vegetation. The Site is currently owned and operated by the Gutter Company, which specializes in fabrication and distribution of guttering. The west side of the building is being used for fabrication and the east side is used for storage. Offices associated with the business are located in the fabrication portion of the building (see Figure 2). The surrounding area consists of mixed industrial and residential properties.

Historical records indicate the Western Mineral Site was a vermiculite exfoliation plant owned by W.R. Grace Company (W.R. Grace). The facility processed a reported 165,000 tons of vermiculite between 1967 and 1989 (ATSDR 2010). In 1999, the EPA Region 8 responded to concerns regarding possible ongoing exposures to asbestos fibers as a result of historical mining, processing and transportation of asbestos-containing vermiculite from the Libby vermiculite mine, owned by W.R. Grace.

By warranty deed, W.R. Grace conveyed the Site to the Gutter Company in January 1991. The facility had been vacant for a few years prior to the purchase. The fabrication portion of the building is the original Site building and is thought to have been a barrel manufacturing plant prior to W.R. Grace's

ownership. The storage portion of the building appears to have been set up as a bulk materials handling facility. At the time of the removal assessment, the Gutter Company was leasing the basement of the building to an archery club. This is the first removal at the Site.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

The hazardous substance is amphibole asbestos, primarily asbestos-containing vermiculite originating from the Zonolite Mine in Libby, Montana. Asbestos is a hazardous substance as defined by section 101(14) of CERCLA and 40 CFR § 302.4.

Asbestos is a general name applied to a group of silicate minerals consisting of thin, separable fibers arranged in parallel. Asbestos minerals fall into two classes, serpentine and amphibole. Serpentine asbestos has relatively long and flexible crystalline fibers and include chrysotile, the predominant type of asbestos used commercially. Amphibole asbestos minerals are brittle and have a rod- or needle-like shape. Amphibole minerals regulated as asbestos by the U.S. Department of Labor's Occupational Safety and Health Administration includes five classes: fibrous tremolite, actinolite, anthophyllite, crocidolite and amosite.

Asbestos poses health risks when people breathe fibers present in the air. When inhaled in significant quantities, asbestos fibers can cause asbestosis (a scarring of the lungs, which makes breathing difficult), mesothelioma (a rare cancer of the lining of the chest or abdominal cavity) and lung cancer. The link between exposure to asbestos and other types of cancers is less clear.

Amphibole asbestos fibers are located inside the building and in soils at or near the surface. Amphibole asbestos fibers at concentrations ranging from trace to over 3 percent are present in surface soils at the Site. Interior dust samples indicate concentrations of asbestos that ranged from 8,734.23 to 38,501.93s/cm². Amphibole asbestos fibers located inside and outside of the building may migrate off-site, or to other locations inside and outside of the building with increased foot traffic, open bay doors and the use of heavy equipment.

Human exposure via inhalation to amphibole asbestos fibers is the main threat posed by the contamination at the Site. The most likely current exposure pathway is for workers at the Gutter Company which occupies the Site, and for residents that live nearby who may traverse the Site or adjacent areas. The EPA has documented in a previous study and other sampling events that amphibole asbestos fibers can migrate under the proper conditions. Please see the following study included in the Administrative Record for the Site, "Amphibole Mineral Fibers in Source Materials in Residential and Commercial Areas of Libby Pose an Imminent and Substantial Endangerment to Public Health" Weis and Peronard, 2001. Amphibole asbestos fibers can migrate easily in dry, windy conditions, which occur frequently during the summer. Weather conditions combined with increased human activities will increase the likelihood for human exposure and asbestos fiber migration. Much of the asbestos-containing soil at the Site is vegetated to some degree. However, human activity and site use could likely increase the migration of asbestos fibers.

5. National Priorities Listing (NPL) status

The Site is currently not on, nor has it been proposed for listing on the NPL.

6. Maps, pictures, and other graphic representations

Figure 1: Site Location Map

Figure 2: Site Layout Map

Figure 3: Air Sampling Location Map

Figure 4: Air Dust and Surface Soil Sample Location Map

B. Other Actions to Date

1. Previous actions

Activities pertaining to the Site include:

- 2000 – Preliminary Investigation Limited Site Investigation, EPA Region 7
- June 2010 – Removal Assessment, EPA Region 7
- October 2004 – Health Consultation, Western Mineral Products, Omaha, Nebraska, ATSDR

There has been no known EPA or Nebraska Department of Environmental Quality (NDEQ) response action at the Site to reduce the risks posed by asbestos contamination.

2. Current actions

There are no current actions being undertaken at the Site.

C. State and Local Authorities' Role

1. State and local actions to date

There has been no known state or local response action at the Site to reduce the risks posed by asbestos contamination.

2. Potential for continued State/local response

State and local authorities have indicated that they lack the resources to conduct the removal action provided for herein. The EPA, intends to keep NDEQ and the Douglas County, Nebraska, Health Department informed of cleanup progress while this removal action is underway.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Section 300.415(b) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides that the EPA may conduct a removal action when the EPA determines that there is a threat to human health or welfare or the environment based on one or more of the eight factors listed in section 300.415(b)(2). The factors that justify a removal action at the Site are:

300.415(b)(2)(i) – Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances, or pollutants or contaminants.

Amphibole asbestos fibers at concentrations ranging from trace to over 3 percent are present in surface soils at the Site. Human exposure via inhalation to amphibole asbestos fibers is the main threat posed by the contamination at the Site. The most likely current exposure pathway is for workers from The Gutter Company, which occupies the Former Western Mineral Products Facility and residents that live nearby who may traverse the Site. The human inhalation exposure risk could potentially increase in the future depending on the uses of the Facility. The exposure risks are further summarized in the Weis and Peronard study included in the Administrative Record for this Site.

The Site was evaluated by the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (ATSDR). The Health Consultation, dated October 14, 2004, is included in the Administrative Record for this Site. One of the conclusions from ATSDR was that Trace Libby asbestos contamination present around the plant could pose a public health hazard if disturbed. Currently, adverse health effects are unlikely because current workers or other people are not frequently in the areas that are contaminated. Future exposure is possible if these areas become used more often and action is not taken to contain the contamination.

Interior dust samples indicate concentrations of asbestos that ranged from 8,734.23 to 38,501.93s/cm². Amphibole asbestos fibers located inside and outside of the building may migrate off-site to other locations inside and outside of the building with increased foot traffic, open bay doors and the use of heavy equipment.

300.415(b)(2)(v) – Weather conditions that may cause hazardous substances, pollutants or contaminants to migrate.

Amphibole asbestos fibers can migrate easily in dry, windy conditions, which occur frequently in the Omaha area. Weather conditions combined with increased human activities will increase the likelihood for human exposure and asbestos fiber migration.

IV. ENDANGERMENT DETERMINATION

The actual release of hazardous substances at the Site, if not addressed by implementing the response action selected in this Enforcement Action Memorandum, presents an imminent and substantial endangerment to the health of the public that comes in contact with the Site and to public welfare and the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

The proposed action will address amphibole asbestos fibers located inside the building and in surface soils outside of the building as shown in Figure 3 and 4.

In areas of the Site where amphibole asbestos fibers are identified in surface soils, all soils containing detectable levels of asbestos (concentrations of 0.25 percent, or greater, based on polarized light microscopy (PLM) analysis of asbestos by California Air Resource Board (CARB) Method 435 with 400 point count) will be excavated and disposed of off-site in accordance with the Off-Site Rule.

Once the soil concentration of asbestos is less than 0.25 percent, activity-based sampling shall be conducted in the excavation area using site-specific, risk-based criteria to drive further action decisions. Further excavation of soil/waste may be required if site exposures measured by ABS pose unacceptable risk for current and anticipated future land uses.

Asbestos contaminated dust on interior surfaces of the building will be cleaned by High-Efficiency Particulate Air (HEPA) vacuuming, wet wiping or other methods, to prevent the migration/recontamination of other interior or exterior surfaces, and to preclude the resuspension of asbestos fibers in excess of 0.0074 structures per cubic centimeter of air (sampled during aggressive ABS). Based on other similar removals the EPA has performed, it is believed these presumptive cleanup numbers are appropriate. However, if the PRPs show through a site-specific risk assessment that lower cleanup numbers are protective, the EPA will consider those numbers.

Specific removal activities will include, but not be limited to the following:

- Develop and implement an EPA-approved Sampling and Analysis Plan (SAP), which will define the extent of asbestos contamination and estimate exposure potential for current and future land use. The SAP shall include ABS to assess exposure in support of risk-based decisions.
- Prepare a Removal Action Work Plan (RAW) that details plans for the removal and disposal of soil where asbestos may be present in the soil and the indoor environment at the Site at unacceptable levels.
- Sample, identify and characterize all asbestos-containing soils and other hazardous materials.
- Delineate work zones and decontamination area.
- Develop and implement an asbestos-specific health and safety plan to address air monitoring and other asbestos-specific issues to assure protection of cleanup workers and surrounding properties.
- Conduct a reconnaissance visit with contractor personnel to assess layout of the Site and determine required equipment, personnel and utilities.
- Mobilize personnel and equipment.
- Provide Site security as determined necessary by the OSC based on Site conditions.
- Perform air monitoring in accordance with the approved RAW.
- Excavate asbestos-containing soils located on exterior areas of the Site in accordance with the approved RAW and arrange for disposal at an EPA-approved disposal facility.
- Take all required actions as needed to facilitate vegetation cutting, surveying, site grading, back filling and revegetation.
- Take required actions as needed to remove asbestos contaminated dust from the building interior surfaces and arrange for disposal at an EPA-approved disposal facility.
- Confirmatory sampling, including activity-based sampling where appropriate.
- Coordinate transportation and disposal of hazardous substances to an EPA approved disposal facility.
- Repair any response-related damage at the Site.
- Demobilize all equipment and personnel.

2. Contribution to remedial performance

The PRP-lead actions proposed in this Enforcement Action Memorandum should not impede any future remedial plans or other response. At this time, no post removal Site control is anticipated.

3. Applicable or relevant and appropriate requirements (ARARs)

The following specific ARARs have been identified for this action:

Federal

- 40 CFR part 61 Clean Air Act – National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart M - Worker Safety Requirements.
- Department of Transportation (DOT) Regulations at 49 CFR parts 107 and 171-177, DOT hazardous material transportation regulations may be relevant and appropriate for transportation of contaminated soils.

State

By letter dated March 1, 2013, the EPA requested that NDEQ identify ARARs for this removal action. By email dated March 27, 2013, NDEQ identified the following state ARARs that may be applicable to this section:

- Soil excavated and removed with the intent of disposal meets the definition of solid waste in Title 128 – Nebraska Hazardous Waste Regulations, Chapter 4.
- A hazardous waste determination must be made in accordance with Title 128, Chapter 4, 002.
- If material is a hazardous waste, it must be handled in accordance with all hazardous waste management requirements in Title 128, Chapters 8, 9 and 10.
- If material is hazardous waste, it must be disposed of in a permitted TSD facility as required under Title 128 – Nebraska Hazardous Waste Regulations, Chapters 8, 9 and 10. However, generators subject to the requirements of Chapter 8 (conditionally exempt small quantity generator) have disposal options. The transporter must comply with the requirements of Title 128, Chapter 11.
- If the material is not a hazardous waste, it may be a special waste as defined in Title 132 - Integrated Solid Waste Management Regulations, Chapter 1, and the generator must follow the requirements of Title 132, Chapter 12, and may only be disposed at a licensed landfill which is operated and maintained in compliance with Department regulations and that is approved to accept special waste. Department and landfill approval required.
- If sumps are necessary during excavation to dewater, the water to be discharged either to the surface of the ground or a stream, then a permit and/or discharge limits must be obtained from the Department in accordance with Title 119 – Rules and Regulations Pertaining to the Issuance of Permits under the Discharge Elimination System and Title 117 – Nebraska Surface Water Quality Standards. If the water is to be reinjected, it must be done in accordance with Title 122.

- If the material which caused the contamination was a hazardous waste then the closure and post-closure requirements of 40 CFR part 264 or part 265, subpart G, as incorporated by reference in Title 128, Chapters 21 and 22 are applicable.
- As used in 178 NAC 22-001.01 and 22-001.02, an asbestos project includes the following activities which may only be performed by licensed individuals: Determining whether asbestos containing materials (ACM) exists, assessing the condition of ACM, preparing plans and specifications for an asbestos project, performing the asbestos project, and performing final clearance air sampling or soil sampling at the end of an asbestos project, Title 178 – Environmental Health, Chapter 22, 001.01D.
- A business entity, before engaging in an asbestos project, must hold a license issued or renewed by the Department unless a waiver has been granted under 178 NAC 22-003.03, Title 178 – Environmental Health, Chapter 22, 003.01

4. Project schedule

Response actions are anticipated to begin within 120 days of the signing of this Enforcement Action Memorandum. It is anticipated that the project will require approximately 30 days to complete.

B. Estimated Costs

This removal action is expected to be conducted and funded by W.R. Grace & Co. – Conn., the responsible party, pursuant to an Administrative Settlement Agreement and Order on Consent for Removal Action. This Agreement has been negotiated, but not yet signed, by W.R. Grace. The Agreement provides for the reimbursement of the EPA's Past Response Costs as well as its Future Response Costs.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will result in a continued threat to public health or welfare or the environment.

VII. OUTSTANDING POLICY ISSUES

Asbestos is a nationally significant and precedent setting issue as it relates to cleanup levels and removal from interior portions of the building. Region 7 has obtained the concurrence of Headquarters on these two issues. Headquarters concurrence is included in the Administrative Record for this Site.

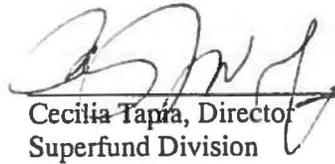
VIII. ENFORCEMENT

As discussed above, EPA has an agreement-in-principle with W.R. Grace for the performance of this removal action. While an Administrative Settlement Agreement and Order on Consent for Removal Action has been negotiated with W.R. Grace, it has not yet been signed. If the EPA is unsuccessful with a negotiated resolution, and a fund-lead response is initiated, an amendment to this Enforcement Action Memo along with an Enforcement Addendum will be prepared.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Western Mineral Products Site in Omaha, Douglas County, Nebraska, developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site. Conditions at the Site meet the NCP section 300.415(b) criteria for a removal and I recommend your approval of the proposed removal action.

Approved:


Cecilia Tapra, Director
Superfund Division

6-19-14
Date

Attachments:

- Figure 1: Site Location Map
- Figure 2: Site Layout Map
- Figure 3: Air Sampling Location Map
- Figure 4: Air Dust and Surface Soil Sample Location Map

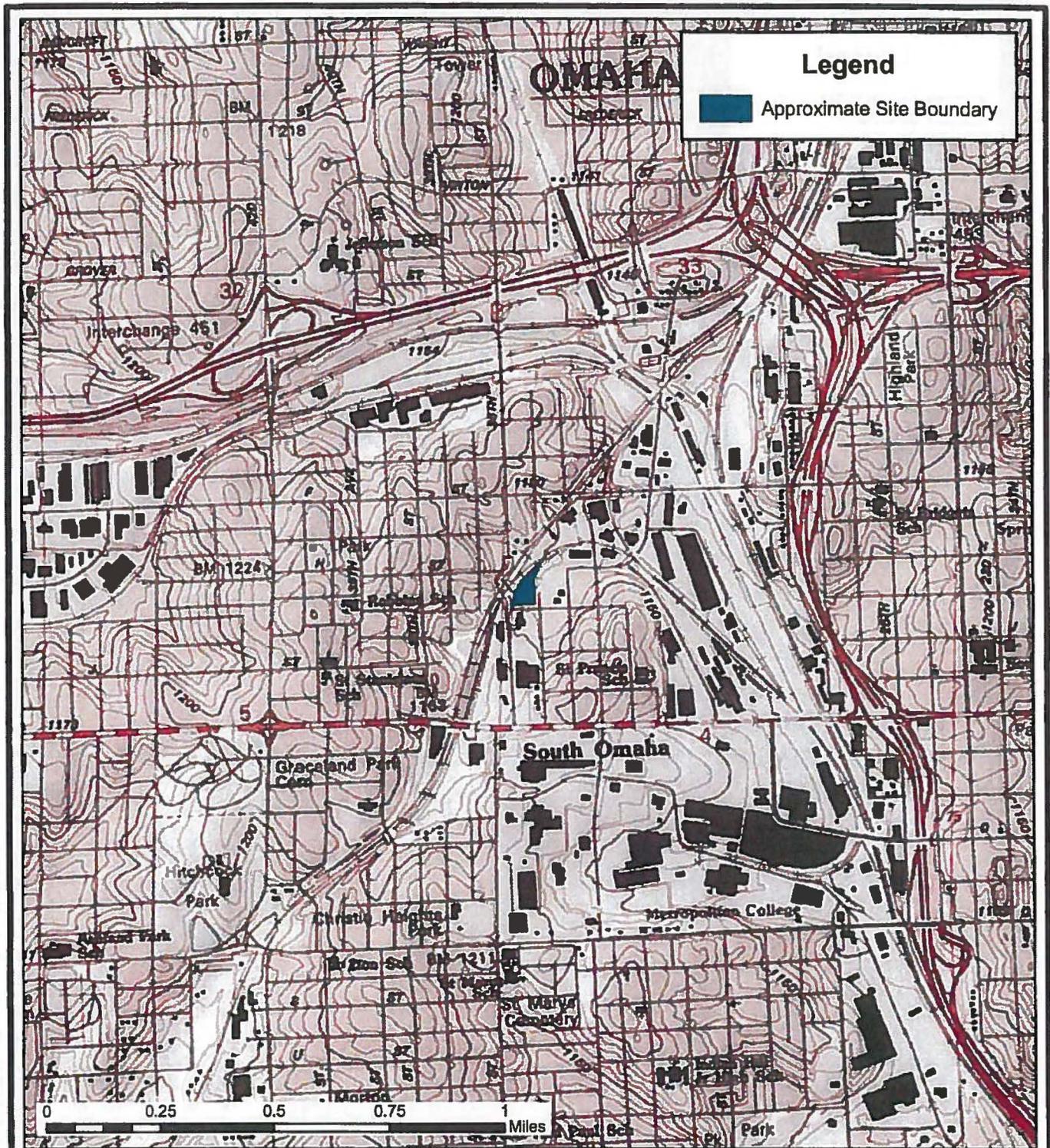
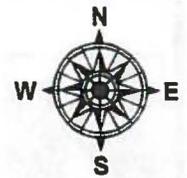


Figure 1
Site Location Map



Western Mineral Products Site, Omaha, Nebraska

Seagull Environmental Technologies, Inc.

Source: U.S. Geological Survey



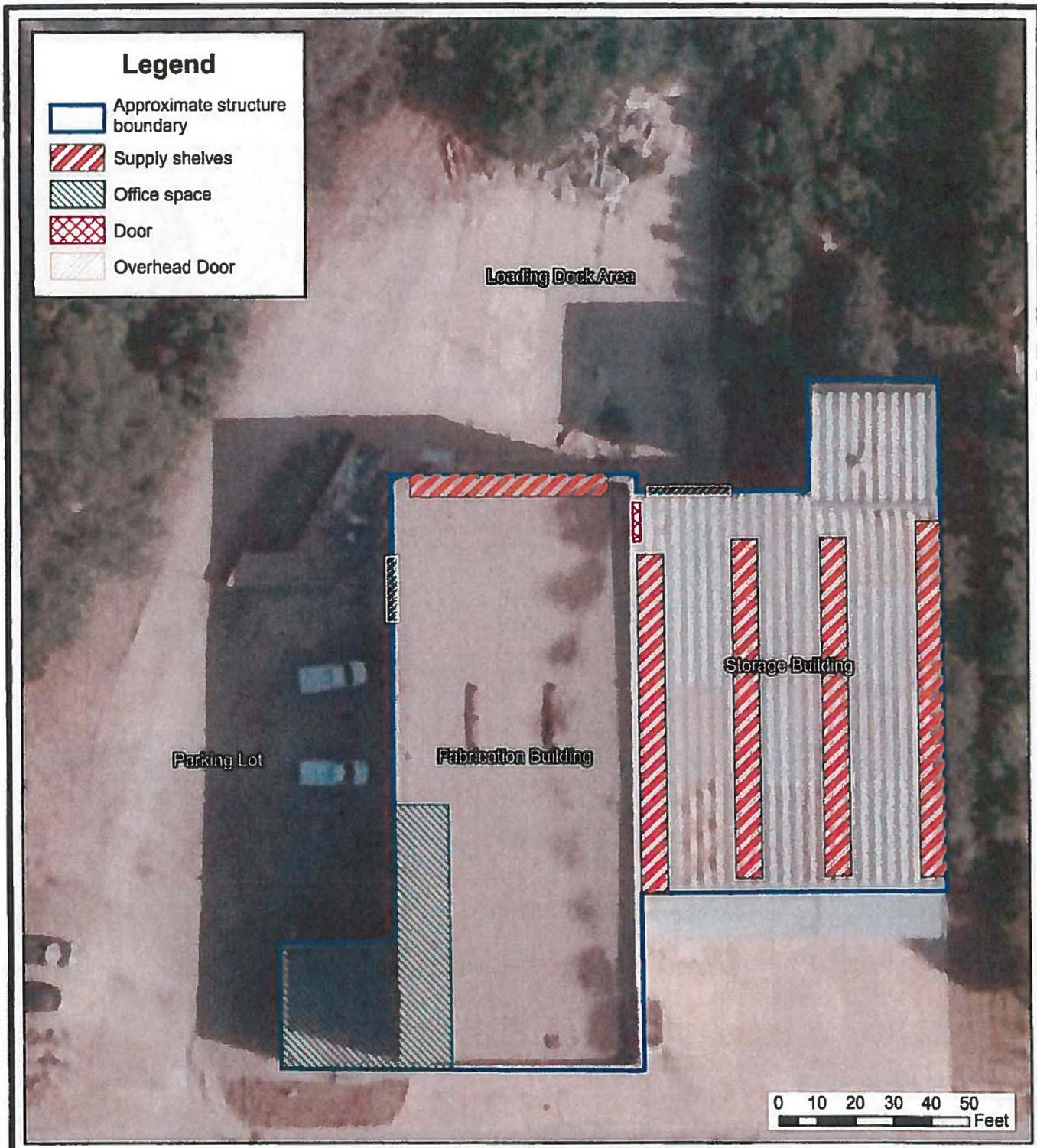
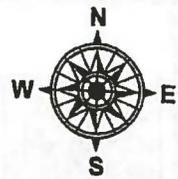


Figure 2
Site Layout Map



Western Mineral Products Site, Omaha, Nebraska



Seagull Environmental Technologies, Inc.

Source: U.S. Geological Survey

Date: June 2010

Project No: EPS70901.0019

Legend

-  Approximate site boundary
-  Interior air sample
-  Exterior air sample
-  Sample results
- s/cc Structures per cubic centimeter
- < Less than

Note 1: Site was clear of woody vegetation during sampling activities.

Note 2: Samples WMV-PER-IND-001, WMV-PER-IND-002, WMV-PER-OUT-001, and WMV-PER-OUT-002 were collected on field personnel during activity based sampling.

WMV-PER-IND-001	<0.0054 s/cc
WMV-PER-IND-002	0.0378 s/cc
WMV-PER-OUT-001	<0.0054 s/cc
WMV-PER-OUT-002	<0.0057 s/cc

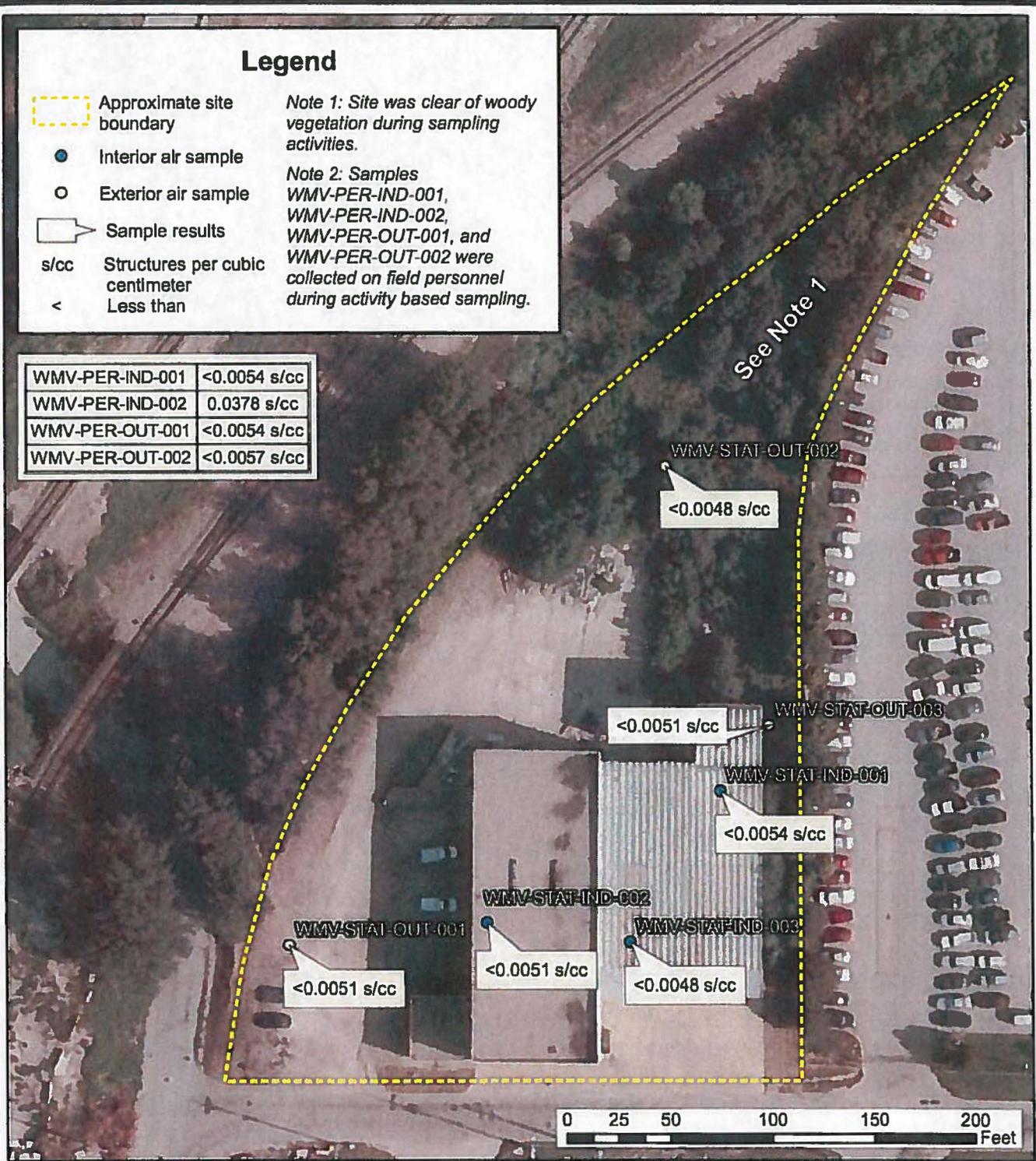
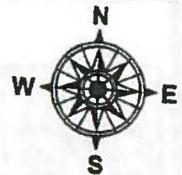


Figure 3
Air Sample Location Map



Western Mineral Products Site, Omaha, Nebraska

Seagull Environmental Technologies, Inc.



Source: U.S. Geological Survey

Date: June 2010

Project No: EPS70901.0019

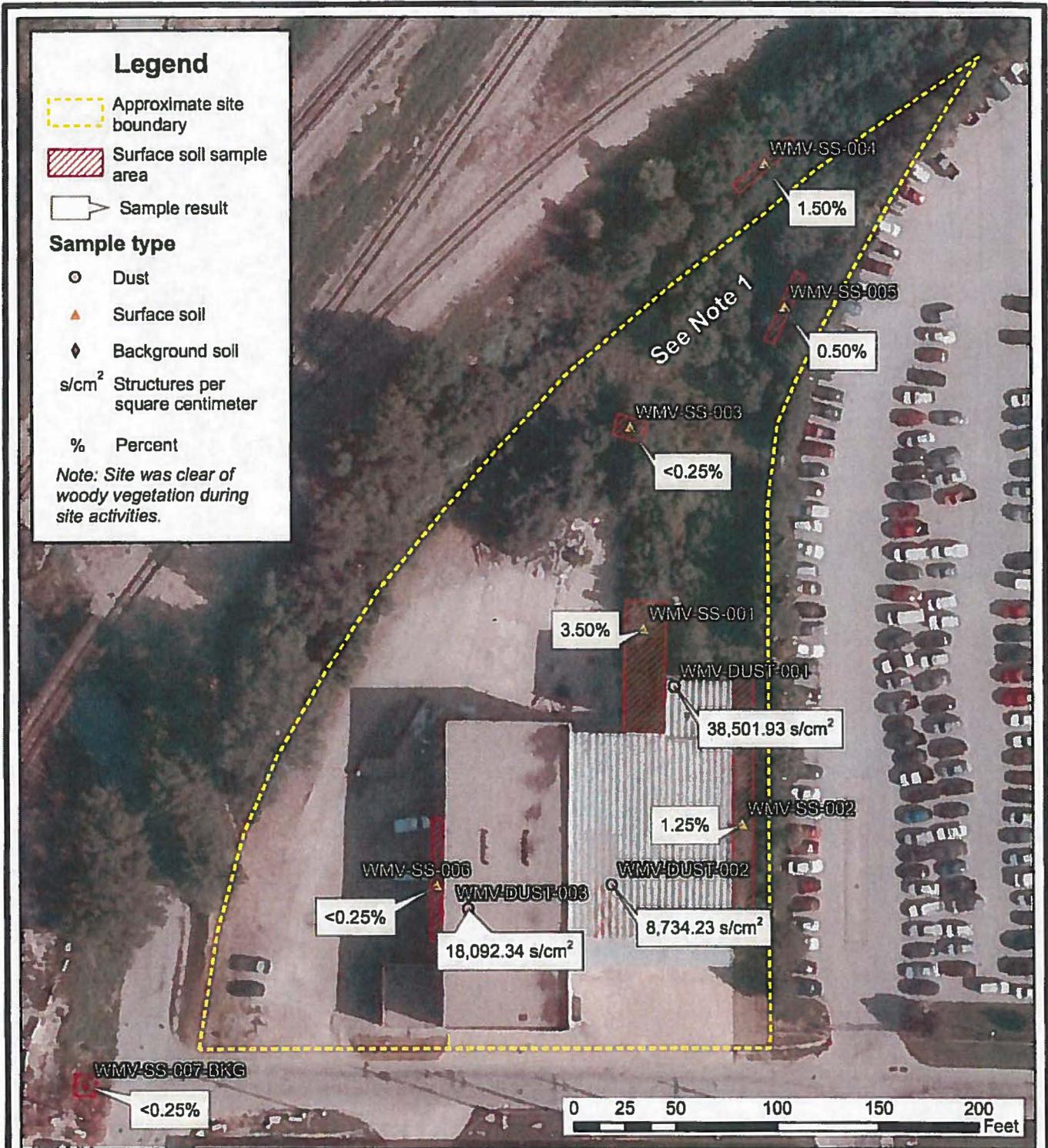


Figure 4
Dust and Surface Soil Sample Location Map

Western Mineral Products Site, Omaha, Nebraska



Seagull Environmental Technologies, Inc.



Source: U.S. Geological Survey

Date: June 2010

Project No: EPS70901.0019