UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8
AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

IN THE MATTER OF: Lincoln Park Superfund Site Cañon City, Fremont County, Colorado Cotter Corporation (N.S.L.) Respondent.	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY U.S. EPA Region 8 CERCLA Docket No. **CERCLA-08-2014-0006** Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.

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

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Appendix A is the Site Map.
Appendix B is the Statement of Work.

I. BACKGROUND AND FINDINGS OF FACT

1. This Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study is entered into voluntarily by the United States Environmental Protection Agency, the Colorado Department of Public Health and Environment, and Cotter Corporation (N.S.L.) (collectively, the Parties). Capitalized terms used but not otherwise defined herein are defined in Section VII of this Settlement Agreement.

2. This Settlement Agreement concerns the preparation and performance of a remedial investigation and feasibility study (RI/FS) for the Lincoln Park Superfund Site, located near Cañon City, in Fremont County, Colorado, and for reimbursement of response costs incurred by EPA and CDPHE in connection with the RI/FS. A map generally depicting the Site is attached hereto as Appendix A.

3. Respondent is a New Mexico corporation with its headquarters in Denver, Colorado. Respondent has been the owner and operator of Respondent's uranium mill (Mill) since 1957.

4. Respondent's Mill received its original license to operate in 1957 from the Atomic Energy Commission (AEC), now the U.S. Nuclear Regulatory Commission (NRC), pursuant to the Atomic Energy Act. In 1968, AEC withdrew certain federal licensing authorities for the Mill pursuant to an agreement with the CDPHE, which was subsequently amended (1968 Agreement). After the 1968 Agreement, CDPHE issued Respondent a Radioactive Materials License to replace the original AEC-issued license. Pursuant to the License, Respondent operated the Mill at the Site. Because of these operations hazardous substances including, but not limited to, uranium, thorium, radium, radon, molybdenum, polychlorinated biphenyls and trichloroethylene have been released or are threatened to be released into the environment.

5. In 1983, the State of Colorado brought a lawsuit under the Comprehensive Environmental Response Compensation and Liability Act against the Respondent in federal court. The suit alleged that operation of the Mill released contaminants into the soil and ground water at the Site.

6. Subsequently, in 1984, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, Vol. 49, Fed. Reg. 37070. EPA organized the Site into three operable units or OUs. OU1 consists of the Mill and surrounding area, including the Shadow Hills Golf Course. OU2 consists of the Lincoln Park study area, a portion of which – residential soils - was addressed by the EPA's January 3, 2002 "Record of Decision, Lincoln Park Study Area – Surface Soils, Lincoln Park Superfund Site, Cañon City, Colorado." OU3 consists of all other areas in the vicinity of the Mill where there has been a release or a threat of release of hazardous substances under CERCLA from Respondent's operations.

7. EPA and CDPHE entered into an April 2, 1986, Superfund Memorandum of Agreement, pursuant to which CDPHE is acting as the lead agency for the Site. CDPHE also has authority under a 1968 agreement between the State and the Nuclear Regulatory Commission, as amended in 1982, 47 FR 20037 (May 10, 1982). EPA retains its rights and responsibilities under

CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and applicable guidance to, among other things, determine whether deletion of the Site from the NPL is appropriate. CDPHE continues to regulate the Site pursuant to its authority under the 1968 agreement, the Colorado Radiation Control Act (RCA), C.R.S. §25-11-101 *et seq.* and regulations adopted thereunder, and §2021 of the Atomic Energy Act, 42 U.S.C. § 2014 *et seq.* Notwithstanding CDPHE's participation in this Settlement Agreement, CDPHE retains all of its authority under the RCA, regulations thereunder, and the CD/RAP, defined below.

8. On April 4, 1988, the U.S. District Court, District of Colorado, entered a consent decree between Respondent and the State of Colorado (Civil Action No. 83-C-2389), that settled a 1983 lawsuit by the State of Colorado against Respondent. The CD obligates Respondent to implement a Remedial Action Plan to address contamination at the Site and to decommission, close, reclaim and monitor the Mill pursuant to the RCA.

9. Pursuant to the RAP and the regulation of the Site by CDPHE under State and federal law, many investigations, studies and interim response actions have been performed at the Site since it was listed on the NPL. Additional information about environmental conditions at the Site is available at the offices of EPA Region 8, the CDPHE website, and the information repository in Cañon City, located at: The Royal Gorge Regional Museum and History Center 612 Royal Gorge Boulevard, P.O. Box 1460, Cañon City, Colorado 81215, (719) 269-9036.

10. On December 12, 2011, Respondent notified CDPHE of its decision to no longer operate the Mill and to begin decommissioning the Site.

11. On January 12, 2012, Respondent and CDPHE entered into a Settlement Agreement and Amendment to Remedial Action Plan (2012 Settlement Agreement) that formalized Respondent's agreement with CDPHE regarding the financial warranty determination for the RAP. The 2012 Settlement Agreement included an Appendix A entitled RAP Project Schedule that listed a timetable for a series of investigatory and remedial actions for the Site to be carried out by Respondent. Shortly thereafter, CDPHE announced a "pause" of these activities in order to organize the Citizens Advisory Group and suspended implementation of this timetable. That pause has now been lifted. Coincident with the execution of this Settlement Agreement, CDPHE and Respondent entered into an agreement substantially modifying the 2012 Settlement Agreement (Agreement Regarding Licensing and Remedial Requirements).

12. In conducting RI/FS activities for the Site, the Parties intend to use, to the extent practicable, data already collected pursuant to the RAP, the License, and State regulations.

13. CDPHE and the Respondent agree that Respondent's obligations under the RCA, the regulations adopted thereunder, Respondent's License, and the CD and RAP shall not be affected by this Settlement Agreement, unless those existing obligations conflict with any obligations imposed pursuant to this Settlement Agreement and in which case CDPHE and the Respondent agree that such a conflict be resolved in a manner that defers to the Work to be performed under this Settlement Agreement.

II. JURISDICTION AND GENERAL PROVISIONS

14. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of CERCLA. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further delegated by the Regional Administrator, EPA Region 8, to the Regional Director of the Superfund Remedial Program, Office of Ecosystems Protection and Remediation.

15. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the natural resource trustees of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under trusteeship.

16. The Parties 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 fact, conclusions of law and determinations set forth in this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees not to contest the basis or validity of this Settlement Agreement.

III. PARTIES BOUND

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

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

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

IV. STATEMENT OF PURPOSE

20. The Parties enter into this Settlement Agreement: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a remedial investigation (RI) as more specifically set forth in the Statement of Work for Remedial Investigation/Feasibility Study (SOW) attached as Appendix B to this Settlement Agreement; (b) to identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances,

pollutants, or contaminants at or from the Site, by conducting a feasibility study (FS) as more specifically set forth in the SOW; and (c) to provide for recovery by the Agencies of Future Response Costs with respect to this Settlement Agreement.

21. The Work conducted under this Settlement Agreement is subject to joint approval by both Agencies and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the NCP. Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies and procedures.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, the Agencies have determined that:

22. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

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

26. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622. Respondent is the current "owner" and "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

27. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

28. The Agencies have determined that Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. DEFINITIONS

30. Unless otherwise expressly provided in this Settlement Agreement, terms used herein 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 its appendices, the following definitions shall apply:

"**Agencies**" shall mean EPA and CDPHE.

"**CD**" shall mean the consent decree entered on April 4, 1988, by the U.S. District Court, District of Colorado, between Respondent and the State (Civil Action No. 83-C-2389), settling a 1983 lawsuit by the State against Respondent, obligating the Respondent to implement the RAP.

"**CDPHE**" shall mean the Colorado Department of Public Health and Environment, and any successor departments or agencies of the State.

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

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

"**Effective Date**" shall mean the effective date of this Settlement Agreement as provided in Section XXVII (Effective Date and Subsequent Modification).

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

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

"**Future Response Costs**" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and CDPHE incur in reviewing or developing plans, reports, and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Paragraph 55 (including, but not limited to, costs and attorney's fees and any monies paid to secure access, including, but

not limited to, the amount of just compensation), Paragraph 43 (Emergency Response and Notification of Releases), and Paragraph 87 (Work Takeover).

"**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.

"**License**" shall mean the Radioactive Materials License #369-01.

"**Lincoln Park ROD**" shall mean the record of decision issued by EPA on January 3, 2002, entitled "Lincoln Park Study Area - Surface Soils, Lincoln Park Superfund Site, Cañon City, Colorado."

"**Lincoln Park Special Account**" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), the funds in which are to be used to address the release or threat of release of hazardous substances on or from the Site.

"**Material Defect**" means a defect that substantially prevents a deliverable under this Settlement Agreement from functioning or performing as designed or intended, or from providing the intended result. "Material Defect" does not include a defect that (a) has an insignificant or *de minimis* effect on the functioning or performance of a deliverable; (b) affects only a component of a deliverable that, as a whole, substantially functions or performs as designed and intended; or (c) has an insignificant or *de minimis* effect on the efficacy of the deliverable.

"**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.

"**Operable Unit 1**" or "OU1" shall mean the Mill and surrounding area, including the Shadow Hills Golf Course.

"**Operable Unit 2**" or "OU2" shall mean the Lincoln Park Study Area, as defined in the Lincoln Park ROD.

"**Operable Unit 3**" or "OU3" shall mean other areas in the vicinity of the Mill, if any, where there has been a release or a threat of release of hazardous substances from Respondent's operations.

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

"**Parties**" shall mean EPA, CDPHE, and the Respondent.

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

"**RAP**" shall mean the "Cotter Uranium Mill Site Remedial Action Plan," which is Appendix A to the CD.

"**Respondent**" shall mean Cotter Corporation (N.S.L.) and its successors and assigns.

"**Section**" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"**Settlement Agreement**" shall mean this Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, the SOW, all other appendices attached hereto (listed in Section XXV) (Integration/Appendices) and all documents incorporated by reference into this document including without limitation submissions approved by the Agencies. Submissions (other than progress reports) are incorporated into and become a part of this Settlement Agreement upon approval by the Agencies. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

"**Site**" shall mean the Lincoln Park Superfund Site, made up of the Mill and associated facilities, and the adjacent community of Lincoln Park, located near Cañon City, in Fremont County, Colorado and depicted generally on the map attached as Appendix A.

"**State**" shall mean the State of Colorado.

"**Statement of Work**" or "**SOW**" shall mean the Statement of Work For Remedial Investigation/Feasibility Study Lincoln Park Superfund Site, Fremont County, Colorado as set forth in Appendix B to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

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

"**Waste Material**" shall mean: (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (d) any "hazardous waste" under the Colorado Hazardous Waste Program, C.R.S. Title 25, Article 15; and (e) any regulated material disposed of under the Colorado Radiation Control Act, CRS 25-11-101 to 305, as amended.

"**Work**" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XII (Retention of Records).

VIII. WORK TO BE PERFORMED

31. Respondent shall conduct the RI/FS in accordance with the provisions of this Settlement Agreement, CERCLA, the NCP and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidance referenced in the SOW and sampling and analysis plans (SAPs), as may be amended or modified by EPA. To the extent practicable Respondent's conduct of the RI/FS shall also be consistent with the License, the Colorado Rules and Regulations Pertaining to Radiation Control, the CD and the RAP.

32. Respondent shall evaluate existing Site data to determine if it is sufficient to (i) characterize conditions within OU1, OU2 and OU3; (ii) determine the nature and extent of the contamination at or from the Site; (iii) assess risk to human health and the environment; and (iv) evaluate the potential performance and cost of the treatment technologies that are being considered. Respondent shall identify any data gaps and submit a work plan to the Agencies to address these data gaps in accordance with the SOW. Respondent shall prepare the RI report in accordance with the SOW.

33. The FS shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include but shall not be limited to the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). The Agencies shall consider how any selected alternative may impede termination of the License pursuant to the termination process under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.

34. All Work performed under this Settlement Agreement shall be in accordance with the schedules herein or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the SOW as approved by the Agencies, and as may be amended or modified from time to time. In accordance with the schedules established in this Settlement Agreement, Respondent shall submit to EPA and CDPHE electronically, as well as duplicate hard copies of, all plans, reports or other deliverables required under this Settlement Agreement. All plans, reports and other deliverables will be reviewed and approved by the Agencies pursuant to Section IX (Approval of Plans and Other Submissions).

35. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). After the Respondent is notified of the identity of this person, such person shall have the authority to observe Work and make inquiries in the absence of the Agencies, but not to modify the SOW or the RI/FS Work Plan (as defined in the SOW).

36. All Work conducted under this Settlement Agreement in performance of the RI/FS shall be under the direction and supervision of qualified personnel.

37. Respondent has designated John Hamrick as its project manager (Respondent's Project Manager) who shall be responsible for administration of all actions by Respondent required pursuant to this Settlement Agreement. Except as otherwise provided in this Settlement Agreement, the Parties shall direct all submissions required by this Settlement Agreement to the Respondent's Project Manager as follows:

John Hamrick
Cotter Corporation (N.S.L.)

For regular mail:
PO Box 1750
Cañon City, CO 81215-1750

For courier or express mail delivery:
0502 County Road 68
Cañon City, CO 81212

The Agencies hereby approve Respondent's selection of John Hamrick as Respondent's Project Manager. Respondent shall have the right to change its project manager, subject to the Agencies' right to disapprove. Respondent shall notify the Agencies thirty (30) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. If the Agencies disapprove of the designated project manager, Respondent shall retain a different project manager and shall notify the Agencies of that person's name, address, telephone number and qualifications within sixty (60) days following the Agencies' disapproval.

38. Respondent shall notify the Agencies in writing of any contractors used to carry out the Work, providing names, titles, and qualifications. The Agencies shall have the right to disapprove changes and additions to contractors in its discretion. If the Agencies disapprove of a contractor, Respondent shall retain a different contractor and shall notify the Agencies of that contractor's name, address, telephone number and qualifications within sixty (60) days following the Agencies' disapproval.

39. The EPA has designated Mark Aguilar as its project manager (EPA Project Manager). EPA will notify the Parties of any change of its designated project manager. CDPHE has designated Jennifer Opila as its project manager (State Project Manager). CDPHE will notify the Parties of any changes in its designated project manager. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the EPA Project Manager and the State Project Manager as follows:

Mark Aguilar
EPA Project Manager, Lincoln Park Site
Superfund Remedial Program, Mail Code 8EPR-SR
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Email: aguilar.mark@epa.gov

Jennifer Opila
State Project Manager, Lincoln Park Site
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Email: jennifer.opila@state.co.us

40. The EPA Project Manager shall have the authority lawfully vested in a remedial project manager by the NCP. In addition, the EPA Project Manager shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. CDPHE retains its authority under the RCA, License and RAP to issue such orders or take any other action as may be necessary to address an imminent threat to the public health, safety or the environment.

41. Meetings. The EPA Project Manager, the State Project Manager and the Respondent's Project Manager shall meet approximately every ninety (90) days or otherwise upon reasonable prior notice. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Additional meetings will be scheduled among the Parties as necessary for implementation of the Work under this Settlement Agreement, to comply with CERCLA and any other procedures agreed upon by the Parties.

42. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to the Agencies quarterly progress reports by the 15th day of the first month of the following quarter. At a minimum, with respect to the preceding quarter, these progress reports regarding the Work shall: (a) describe the actions that have been taken to comply with this Settlement Agreement during that quarter; (b) include all results of any sampling and tests and all other data received by Respondent during that quarter; (c) describe Work planned for the next two quarters with schedules relating such Work to the overall project schedule for RI/FS completion; and (d) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

43. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from 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 in order to prevent, abate or minimize such release or endangerment caused or threatened by the release.

b. Respondent shall also immediately notify the EPA Project Manager and the State Project Manager, and, in the event of the EPA Project Manager's unavailability, Respondent will immediately notify the Regional Duty Officer, Emergency Response Unit, at (303) 293-1788, and

the National Response Center at (800) 424-8802 of the incident or Site conditions. Respondent shall submit a written report to the Agencies within seven (7) days after each release, setting forth the events that occurred and 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.* In the event that Respondent fails to take appropriate response action as required by this Paragraph and EPA or the CDPHE takes such action instead, Respondent shall reimburse EPA or the CDPHE, as applicable, for all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Future Response Costs).

c. The requirements in this Paragraph 43 are in addition to the reporting requirements of the License, the CD and the RAP.

IX. APPROVAL OF PLANS AND OTHER SUBMISSIONS

44. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement in a notice to Respondent, the Agencies shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, the Agencies shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to Material Defects.

45. In the event of approval, approval upon conditions, or modification by the Agencies, pursuant to Paragraph 44 (a), (b), (c), or (e), Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by the Agencies subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIII (Dispute Resolution) with respect to the modifications or conditions made by the Agencies. Following the Agencies' approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by the Agencies. In the event that the Agencies modify the submission to cure the deficiencies pursuant to Paragraph 44 (c) or (d) and the submission had a Material Defect, the Agencies retain the right to seek stipulated penalties, as provided in Section XIV (Stipulated Penalties).

46. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within thirty (30) days or such longer time as specified by the Agencies in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XIV (Stipulated Penalties), shall accrue during the thirty (30) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a Material Defect as provided in Paragraphs 44 and 45, respectively.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission that is not dependent upon the disapproved portion, unless otherwise directed by the Agencies. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving the Agencies' approval, approval on condition, or modification of the following deliverables: Draft RI Report and FS Report (as both are defined in the SOW). While awaiting the Agencies' approval, approval on condition, or modification of these deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with any schedule set forth under this Settlement Agreement.

d. For all remaining deliverables not listed in Sub-Paragraph c, above, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting the Agencies' approval on the submitted deliverable. The Agencies reserve the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

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

48. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by the Agencies due to a Material Defect, Respondent shall be deemed to have failed to submit such document or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XIII (Dispute Resolution) and the Agencies' action is revoked or substantially modified pursuant to a dispute resolution decision or superseded by an agreement reached pursuant to that Section. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during dispute resolution. If the Agencies' disapproval or modification is not otherwise revoked, substantially modified, or superseded by a decision or agreement reached pursuant to the dispute resolution process set forth in Section XIII (Dispute Resolution), stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIV (Stipulated Penalties).

49. In the event that the Agencies take over some of the tasks, but not the preparation of the Draft and Final RI Reports or the FS Report, Respondent shall incorporate and integrate information supplied by the Agencies into the final reports.

50. All plans, reports, and other deliverables submitted to the Agencies under this Settlement Agreement shall, upon approval or modification by the Agencies, be incorporated into and enforceable under this Settlement Agreement. In the event the Agencies approve or modify a portion of a plan, report, or other deliverable submitted to the Agencies under this Settlement

Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

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

52. Access to Information.

a. To the extent not previously provided, and upon request, Respondent shall provide the Agencies with copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) within its possession or control or that of its contractors relating to the implementation of this Settlement Agreement or performance of the Work, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence (Records). Respondent shall also make available, upon request, to the Agencies, for purposes of investigation, information gathering, or testimony, Respondent's employees and contractors with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the Records submitted to the Agencies under this Settlement Agreement, for records submitted to the EPA 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), and, for records submitted to CDPHE, to the extent permitted by the State of Colorado Open Records Act, §§ 24-72-201, et seq. Records determined to be confidential by EPA or CDPHE will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B or C.R.S.§ 24-72-204, respectively, or under an applicable joint privilege. If no claim of confidentiality accompanies Records when they are submitted to the EPA, or if the Agencies have notified Respondent that the Records are not confidential under either the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, or C.R.S.§ 24-72-204, the public may be given access to such Records without further notice to Respondent. Respondent shall segregate and clearly identify all Records submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. Respondent may assert that Records 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 Records, it shall provide the Agencies with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the Record; and (vi) the privilege asserted by Respondent. However, no Records required to be generated and submitted pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other Records evidencing conditions at or around the Site, except where disclosure would violate State or federal privacy requirements.

53. In entering into this Settlement Agreement, Respondent waives any objections to any data gathered, generated, or evaluated by EPA, CDPHE or Respondent in the performance or oversight of the Work that has been verified according to the Quality Assurance Project Plan (QAPP) (as defined in the SOW) procedures required by this Settlement Agreement or any work plans or sampling and analysis plans approved by the Agencies. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to the Agencies a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations on the use of the data. Such report must be submitted to the Agencies within thirty (30) days after Respondent receives a copy of such data from the Agencies.

X. SITE ACCESS

54. If the Site or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide the Agencies and their representatives, including previously identified contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

55. 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 sixty (60) days after the Effective Date, or as otherwise specified in writing by the Agencies. Respondent shall notify the Agencies within ten (10) days 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. If Respondent cannot obtain access agreements, the Agencies may either: (a) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as the Agencies deem appropriate; (b) perform those tasks or activities with the Agencies' contractors; or (c) terminate this Settlement Agreement. Respondent shall reimburse the Agencies for all Future Response Costs incurred by the Agencies in obtaining such access, in accordance with the procedures in Section XVI (Payment of Future Response Costs). If the Agencies perform those tasks or activities with their contractors and do not terminate this Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse the Agencies for all Future Response Costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by the Agencies into its plans, reports, and other deliverables.

56. Notwithstanding any provision of this Settlement Agreement, the Agencies retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, RCA, and any other applicable statute or regulation.

XI. COMPLIANCE WITH OTHER LAWS

57. Respondent shall comply with all applicable State and federal laws and regulations when performing the RI/FS. No local, State, or federal permit, except as required under the License, shall be required for any portion of any action conducted entirely on-Site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-Site and requires a federal or State permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

XII. RETENTION OF RECORDS

58. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, Respondent shall preserve and retain all non-identical Records, including Records in electronic form, now in its possession or control or that come into its possession or control that relate in any manner to the implementation of this Settlement Agreement or performance of the Work, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of any Work under this Settlement Agreement, Respondent shall also instruct its contractors to preserve all Records of whatever kind, nature, or description relating to performance of the Work.

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

60. 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, reports, or information (other than identical copies) required to be issued under the CD, RAP or License, relating to its potential liability regarding the Site and that it has fully complied with any and all of the Agencies' requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and State law.

XIII. DISPUTE RESOLUTION

61. 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 disagreement concerning this Settlement Agreement expeditiously and informally.

62. If Respondent objects to any action of the Agencies taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify the Agencies in writing of its objection(s) within thirty (30) days after such action, unless the objection(s) has/have been resolved informally. The Agencies and Respondent shall have thirty (30) days from the Agencies' receipt of Respondent's written objection(s) to resolve the dispute (Negotiation Period). The Negotiation Period may be extended at the mutual agreement of the Parties. Any such extension must be confirmed in writing.

63. Any agreement reached by the Agencies and the Respondent pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Agencies and Respondent are unable to reach an agreement within the Negotiation Period, the Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation (EPA ARA), after consultation with the Director of Environmental Programs at CDPHE, will issue a written decision. Respondent shall be given an opportunity to meet with the dispute resolution decision maker or his or her delegate before the decision on the dispute is made. Respondent's obligations under this Settlement Agreement that are not affected by the dispute resolution process shall proceed. The dispute resolution decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of a 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 the dispute resolution decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

64. EPA and CDPHE will cooperate to the fullest extent possible to ensure that RI/FS activities are performed and fully and completely implemented. In the event of a disagreement between EPA and CDPHE, the matter shall be referred to the EPA ARA and the Director of Environmental Programs for CDPHE who shall attempt to issue a joint decision. In the event the EPA ARA and CDPHE Director are unable to issue a joint determination, the EPA ARA will issue a decision. The EPA ARA shall consider the CDPHE position in this matter in light of CDPHE's responsibilities and authorities under RCA, CERCLA, and the CD.

XIV. STIPULATED PENALTIES

65. Respondent shall be liable for stipulated penalties in the amounts set forth in Paragraphs 66 and 67 for failure to comply with the requirements of this Settlement Agreement specified below unless excused under Section XV (Force Majeure).

66. Stipulated Penalty Amounts - Draft and Final RI Reports and FS Report. The following stipulated penalties shall accrue per day for noncompliance for failure to timely submit the Draft and Final RI Reports and the FS Report in accordance with the SOW:

Penalty Per Violation Per Day	Period of Noncompliance
$ 2,000	1st through 14th day
$ 10,000	15th through 30th day
$ 20,000	31st day and beyond

67. Stipulated Penalty Amounts - Other Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents, pursuant to Paragraph 44, other than the Draft and Final RI Reports, and the FS Report.

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 4,000	15th through 30th day
$ 10,000	31st day and beyond

68. In the event that the Agencies assume performance of a portion or all of the Work pursuant to Paragraph 87 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $50,000.

69. 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 IX (Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after the Agencies' receipt of such submission until the date that the Agencies notify Respondent of any deficiency; and (b) with respect to a decision by the EPA management officials designated in Section XIII (Dispute Resolution) of this Settlement Agreement, during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management officials issue 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.

70. Following a determination by the Agencies that Respondent has failed to comply with a requirement of this Settlement Agreement, the Agencies may give Respondent written notification of the same and describe the noncompliance. The Agencies may also send Respondent a written demand for the payment of the penalties. However, penalties shall not accrue as provided in the preceding Paragraph if the Agencies have not notified Respondent of a violation.

71. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondent's receipt from the Agencies of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XIII (Dispute Resolution). Respondent shall make all payments required by this Paragraph to the EPA by Fedwire Electronic Funds Transfer as provided in Paragraph 79.a below. All payments under this Section shall clearly indicate that the payment is for stipulated penalties. At the time of any

payment, Respondent shall send notice to EPA Region 8 that payment has been made as provided in Paragraph 79.b below.

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

73. Except as set forth in Paragraph 69, 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 the Agencies' decision.

74. If Respondent fails to pay stipulated penalties when due, the 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 70.

75. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the Agencies' ability to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), the RCA, the CD and RAP, and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of willful violation of this Settlement Agreement or in the event that the Agencies assume performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights), Paragraph 87. 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.

XV. FORCE MAJEURE

76. 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, *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 or increased cost of performance.

77. 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 the Agencies orally within three (3) business days and in writing within five (5) business days of when Respondent first knew that the event would likely cause a delay. Within fourteen (14) days thereafter, Respondent shall provide to the Agencies in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and

a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

78. If the Agencies agree 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 the Agencies for such time as is necessary to complete those obligations, and the Agencies shall further notify Respondent of the length of said extension. 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 the Agencies agree that the delay is attributable to a *force majeure* event, the Agencies will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVI. PAYMENT OF FUTURE RESPONSE COSTS

79. Payments of Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a standard regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA, its contractors, and, if any, by the Department of Justice. Respondent shall make all payments within thirty (30) days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 81 of this Settlement Agreement.

Respondent shall make all payments required by this Settlement Agreement to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number 0828 and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that payment has been made to the EPA Region 8's Technical Enforcement Program, at:

Attn: Lincoln Park Superfund Site
Director, Technical Enforcement Program
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

and to the EPA Cincinnati Finance Office by email at:

acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 0828 and the EPA docket number for this action.

c. The total amount to be paid by Respondent to the EPA pursuant to Paragraph 79.a shall be deposited by the EPA in the Lincoln Park Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by the EPA to the EPA Hazardous Substance Superfund.

d. Respondent shall pay CDPHE all Future Response Costs consistent with the billing mechanisms established for the License.

80. Interest. If Respondent does not pay Future Response Costs within thirty (30) days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on unpaid Future Response Costs shall begin to accrue on the due date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 79.

81. Respondent may contest payment of any Future Response Costs billed under Paragraph 79 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes the EPA incurred 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 after receipt of the bill and must be sent to the EPA Project Manager. 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 thirty (30) day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 79. 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, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA Project Manager 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 XIII (Dispute Resolution). If EPA prevails in the dispute, within ten (10) days after the resolution of the dispute, Respondent shall pay the sums due (with accrued Interest) to EPA in the manner described in Paragraph 79. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus

associated accrued Interest) for which it did not prevail to EPA in the manner described in Paragraph 79. 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 XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVII. FINANCIAL ASSURANCE

82. Within sixty (60) days after the Agencies' approval of the RI/FS Work Plan, Respondent shall establish and maintain financial security for the benefit of EPA in the amount equal to the estimated cost to complete the RI/FS as determined by EPA, by amending the existing financial assurance documents provided pursuant to the License or CD and RAP to include the EPA.

Respondent may change the form of financial assurance provided at any time, upon notice to and prior written approval by EPA and CDPHE, provided that EPA and CDPHE determine that the new form of assurance meets the requirements of this Settlement Agreement, including the SOW. 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. Should Respondent choose to change the form, any financial assurance instruments provided shall be in form and substance satisfactory to EPA and CDPHE, as determined in EPA's and CDPHE's discretion. In the event that EPA and CDPHE determine that the financial assurances provided (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days after receipt of notice of EPA's and CDPHE's written determination, obtain and present to EPA and CDPHE for approval of another form of financial assurance acceptable to EPA and CDPHE. In addition, if at any time EPA and CDPHE notify Respondent in writing 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 and CDPHE for approval a revised form of financial assurance 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, including the SOW. Disputes regarding financial assurance shall be resolved pursuant to the Dispute Resolution provision in Section XIII of this Settlement Agreement.

If, after the first anniversary of the Effective Date of the Settlement Agreement, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth above, Respondent may reduce the amount of the financial security provided to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA and CDPHE, in accordance with the requirements of this Settlement Agreement and may reduce the amount of the security after receiving written approval from EPA and CDPHE. In the event of a dispute, Respondent may seek dispute resolution pursuant to the Dispute Resolution provisions in Section XIII of this Settlement Agreement. Respondent may reduce the amount of security in accordance with EPA's and CDPHE's written decision resolving the dispute.

XVIII. INSURANCE

83. At least thirty (30) days before beginning any on-Site Work, Respondent will secure and maintain for the duration of the RI/FS process, commercial general liability insurance with limits of at least one million dollars for any one occurrence, and automobile insurance with limits of at least one million dollars, combined single limit, naming the Agencies as additional insureds, with respect to all liability arising out of the activities performed by or on behalf of Respondent under this Settlement Agreement. Respondent will provide the Agencies with certificates of such insurance and a copy of the provisions of each insurance policy affecting the Agencies' coverage. Respondent shall submit these certificates and copies of policies each year on the anniversary of the Effective Date of this Settlement Agreement. In addition, for the duration of this Settlement Agreement, Respondent will satisfy, and will instruct its contractors to satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing Work under this Settlement Agreement, including the SOW, on behalf of Respondent. If Respondent demonstrates to the Agencies' satisfaction that a contractor is maintaining 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 will need to provide only that portion of the insurance described above that is not maintained by that contractor.

XIX. COVENANT NOT TO SUE BY EPA AND CDPHE

84. 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, each Agency 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) or the Colorado Hazardous Waste Act, C.R.S. §§ 25-15-101, *et seq.*, for the Work and Future Response Costs. These covenants not to sue shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 79 (Payment of Future Response Costs). These covenants not to sue extend only to Respondent and do not extend to any other person.

XX. RESERVATIONS OF RIGHTS

85. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA, the United States, or CDPHE 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 or CDPHE 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.

86. The Agencies' covenants not to sue that are set forth in Section XIX above do not pertain to any matters other than those expressly identified therein. The Agencies reserve 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 definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, 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 Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement Agreement.

87. Work Takeover. In the event the Agencies determine 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 that may cause an endangerment to human health or the environment, the Agencies may assume the performance of all or any portion of the Work as the Agencies determine necessary. Respondent may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute the Agencies' determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the Agencies performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XVI (Payment of Future Response Costs). Notwithstanding any other provision of this Settlement Agreement, the Agencies retain all authority and reserve all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

88. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State or their contractors or employees with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which Future Response Costs have or will be incurred, including any claim under the United States

Constitution, the Colorado Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law;

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 or payment of Future Response Costs; or

d. any claim pursuant to the Colorado Hazardous Waste Control Act, Colorado Revised Statutes, Title 25, Article 15 (CRS § 25-15-101 et seq.).

89. Respondent agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

90. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA and CDPHE), other than in Paragraph 86.a (liability for failure by Respondent to meet a requirement of this Settlement Agreement) or 86.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

XXII. OTHER CLAIMS

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

93. Except as provide in Section XIX (Covenant Not to Sue by EPA and CDPHE), 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.

94. No action or decision by the Agencies 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

95. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XXI (Covenant Not to Sue by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42

U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement 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).

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

97. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify the appropriate Agency 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 the Agencies in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondent shall notify the Agencies 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.

98. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA or by CDPHE, for injunctive relief, recovery of response costs, or other relief relating to the Work or Future Response Costs, 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 addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA and CDPHE set forth in Section XIX.

XXIV. INDEMNIFICATION

99. Respondent shall indemnify, save and hold harmless the United States, the State, their officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and representatives in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States and the State all costs incurred by the United States or the State, including but not limited to attorney's fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States or the State based on negligent or 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. Neither the United States nor the State shall 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 or the State.

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

101. Respondent waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State 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. In addition, Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

XXV. INTEGRATION/APPENDICES

102. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be generated and submitted pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the matters addressed in this Settlement Agreement. Other than the representations, agreements or understandings in the documents referenced in Paragraph 11, 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 is the Site Map.
Appendix B is the Statement of Work.

XXVI. ADMINISTRATIVE RECORD

103. The Agencies will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to the Agencies documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of the Agencies, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of the Agencies, Respondent shall also submit any previous studies conducted under State, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and State, local, or other federal authorities concerning selection of the response action. At the Agencies' discretion, Respondent

shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

104. The effective date of this Settlement Agreement shall be the date upon which the Agencies issue written notice that the public comment period pursuant to Paragraph 108 has closed and that comments received, if any, do not require withdrawal by the Agencies from this Settlement Agreement.

105. This Settlement Agreement may be amended by mutual agreement of the Agencies and Respondent. Amendments shall be in writing and shall be effective when signed by the Parties. The EPA Project Manager and the State Project Manager do not have the authority to sign amendments to the Settlement Agreement.

106. No informal advice, guidance, suggestion, or comment by the Agencies' project managers or other 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. NOTICE OF COMPLETION OF WORK

107. When the Agencies have determined that the RI/FS process established in the SOW for all or a portion of the Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and record retention, the Agencies will provide written notice to Respondent. If the Agencies determine that any Work has not been completed in accordance with this Settlement Agreement, the Agencies will notify Respondent, provide a list of the deficiencies, and require Respondent to correct such deficiencies. Failure by Respondent to correct such deficiencies shall be a violation of this Settlement Agreement. Respondent shall have the right to request a determination by the Agencies that the Work has been fully performed in accordance with this Settlement Agreement.

XXIX. OPPORTUNITY FOR PUBLIC COMMENT

108. This Settlement Agreement shall be subject to a public comment period of not less than sixty (60) days. The Agencies reserve the right to withdraw if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

Agreed this 11th day of July, 2014.

For Respondent Cotter Corporation (N.S.L.)

By: _____
Kenneth J. Mushinski
President, Cotter Corporation (N.S.L.)

For the State:

BY: _____ DATE: 7/15/14

Gary Baughman
Director, Hazardous Waste Materials & Waste Management Division
Colorado Department of Public Health and Environment

It is so ORDERED AND AGREED:

BY: Robert L. Stutes, acting for DATE: 7/15/14

Bill Murray
Director, Superfund Remedial Program
Office of Ecosystems Protection
and Remediation, Region 8
U.S. Environmental Protection Agency

BY: Kelcey Land DATE: 7/15/14

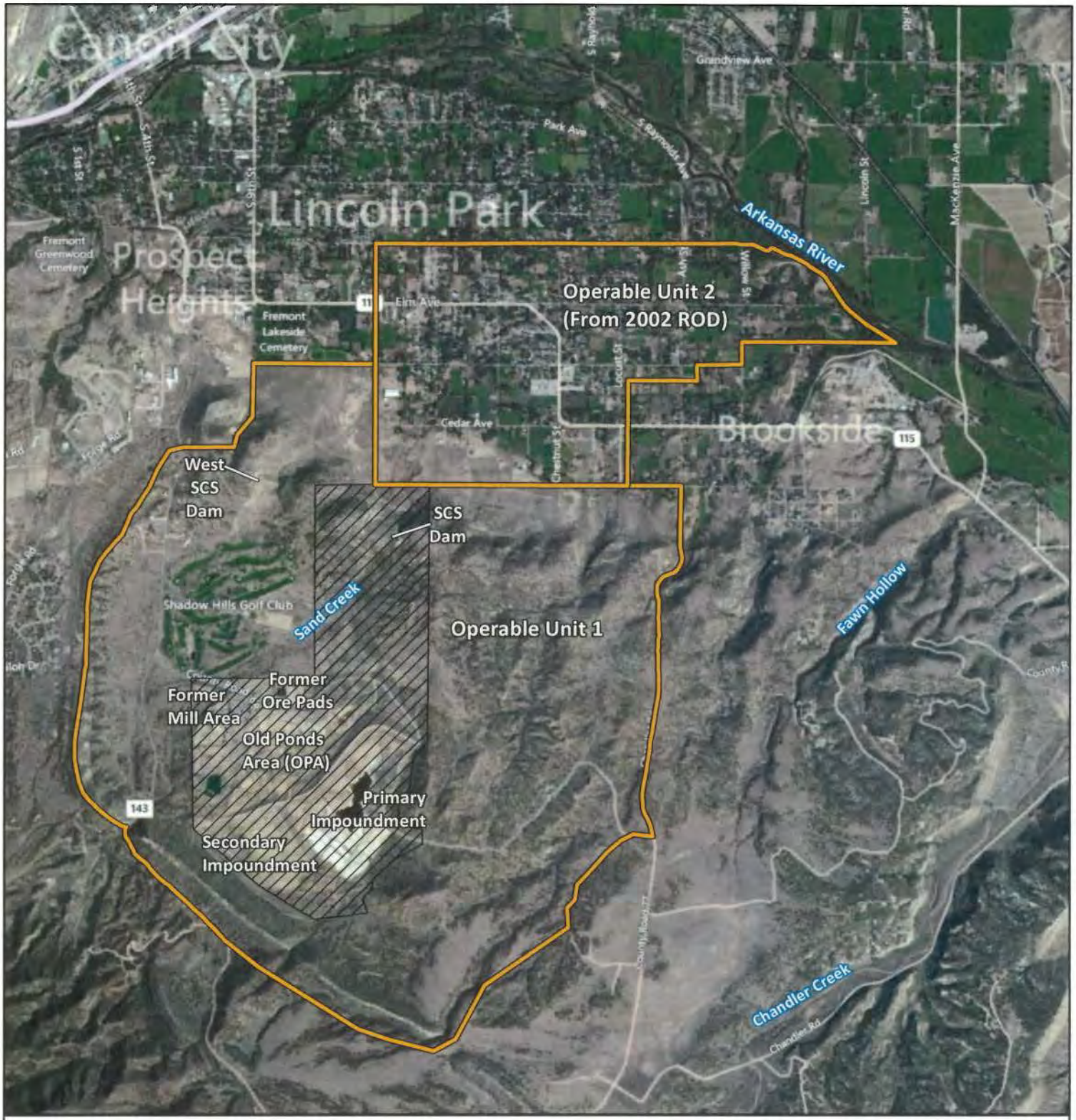
Kelcey Land
Director, Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency

BY: Andrea Madigan DATE: 7/15/14

Andrea Madigan
Acting Director, Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency

APPENDIX A

SITE MAP
LINCOLN PARK SUPERFUND SITE, FREMONT COUNTY, COLORADO



Lincoln Park NPL Site - Fremont County, Colorado

OU Boundary

Restricted Area

Map Date: July 12, 2012

Map Projection: UTM, Meters, 13 North, NAD83

Data Sources: *Boundaries* - U.S. EPA Region 8 (2012); *Imagery* - Microsoft Bing web service (2012).

N

0 0.5 1 Miles

Colorado

Area Enlarged

*Boundaries are based on the nature and extent of contamination and are subject to change.

APPENDIX B

STATEMENT OF WORK FOR
REMEDIAL INVESTIGATION/FEASIBILITY STUDY
LINCOLN PARK SUPERFUND SITE, FREMONT COUNTY, COLORADO

July 2014

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(continued)

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1. INTRODUCTION

This Statement of Work (SOW) is part of and incorporated as Appendix B into the RI/FS Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study for the Lincoln Park Superfund Site, located in Fremont County, Colorado (Settlement Agreement). The Settlement Agreement was entered into by Cotter Corporation (N.S.L.), the Colorado Department of Public Health and Environment and the U.S. Environmental Protection Agency (collectively, the Parties). References in this SOW to the "Settlement Agreement" are meant to refer to the Settlement Agreement and all of its Appendices, including this SOW, which is Appendix B to the Settlement Agreement. References in this SOW to "SOW" incorporate by reference the provisions of the Settlement Agreement.

Respondent holds a Radioactive Materials License issued by CDPHE. EPA listed the Site on the National Priorities List (NPL) as a result of contamination that was released from the Cotter Uranium Mill (Mill). A number of investigations and response actions have occurred at the Site under CERCLA, the License, a Consent Decree and a Remedial Action Plan, which the State entered into with Respondent in 1988 that settled a 1983 lawsuit by the State of Colorado against Respondent. This SOW sets forth the Work, including conducting a remedial investigation (RI) and feasibility study (FS) (collectively, the RI/FS).

The Parties recognize that Respondent is obligated to comply with CERCLA, the License, and the CD/RAP, and that the actions taken under the Settlement Agreement and SOW by the Parties are intended to lead to removal of the Site from the NPL and License termination.

Unless otherwise expressly provided in the Settlement Agreement or this SOW, the terms used herein that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. Whenever terms defined in the Settlement Agreement are used in this SOW, they shall have the same meaning assigned to them in the Settlement Agreement.

2. PURPOSE OF THE STATEMENT OF WORK

This SOW describes the Work, including the requirements for undertaking and completing an RI/FS for the Site. The purpose of the RI/FS process is to investigate the nature and extent of contamination at and from the Site, to assess human health and ecological risks and to develop and evaluate potential remedial alternatives for the Site. Respondent shall conduct the RI/FS in accordance with the requirements of the Settlement Agreement and consistent with the NCP, EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (OSWER Directive 9355.3-01, October 1988), and other guidance documents relevant to conducting an

RI/FS.[1] The Parties shall identify such other guidance documents as part of the scoping process.

The RI/FS may be performed in multiple phases, each of which may include all or portions of three Operable Units (OUs), OU1, OU2 and OU3, with the number of phases to be determined by the Parties. The RI will include an evaluation of existing data, which will be subject to data quality verification, and identification of data gaps, if any. If necessary, additional data will be developed sufficient to characterize the nature and extent of contamination at the Site. After the RI, the FS will examine alternative remedial responses to mitigate or eliminate risks associated with the release or threat of release of hazardous substances at the Site.

As specified in CERCLA Section 104(a)(1), the Agencies will provide oversight of Respondent's activities throughout the RI/FS process. Respondent shall support the Agencies' initiation and conduct of oversight activities.

Work under this SOW will be accomplished in one or more phases to address the three OUs. Work on any one phase of the RI/FS need not preclude work on any other phase. The requirements of this SOW apply to each phase, regardless of the order in which they are addressed. If collection of additional data is needed to complete the RI/FS for any phase, this SOW describes requirements for collecting and compiling such data.

3. GENERAL REQUIREMENTS

This SOW provides a framework for Respondent as it performs the Work for each OU, or for a portion of an OU, subject to oversight by the Agencies. Respondent shall provide all necessary and appropriate personnel, materials, and services needed for, or incidental to, performing and completing the RI/FS in accordance with the requirements of the Settlement Agreement including this SOW, the NCP, and applicable guidance.

Respondent will propose and implement appropriate technical procedures and methodologies, using accepted engineering practices and quality assurance controls, as well as applicable EPA guidance. A summary of the major deliverables is provided in Section 15 of this SOW.

During the RI/FS process, Respondent will meet at least quarterly with a designated EPA Project Manager and the State Project Manager, either face-to-face or by telephone conference call. Respondent will document all decisions made in meetings and conversations with the Agencies and forward this documentation to the Agencies within ten (10) working days after the meeting or conversation. The documents discussed in Sections 6-14 detailed below will be completed for each OU.

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[1] Examples of primary guidance on risk assessment can be found at: www.epa.gov/oswer/riskassessment/human_health_exposure.htm and www.epa.gov/region8/r8risk.

4. RECORDS MAINTENANCE

Respondent shall establish and maintain a project database for the RI/FS in a format acceptable to the Agencies. Respondent shall ensure that the Agencies have unlimited access to the project database for the RI/FS throughout the RI/FS process. At the end of each phase of data collection or compilation, and after Respondent has completed all data validation, Respondent shall provide a complete copy of the project database to the Agencies in a format agreed upon by the Parties.

5. ASSEMBLE EXISTING INFORMATION RELEVANT TO THE RI/FS

Respondent shall assemble all existing reports and data that are relevant to the RI/FS. Respondent shall provide such information to the Agencies in accordance with Section 15 of this SOW. Respondent shall submit environmental sampling and analysis data in an electronic format consistent with the project database structure to allow the data to be uploaded to the project database.

Relevant existing data and information may include, but are not limited to, the following:

5.1 Groundwater

a. Groundwater flow in relevant aquifers (alluvium and bedrock):

(1)Lateral and vertical gradients.

(2) Seasonal and temporal variability.

(3) Aquifer parameters (including transmissivity, hydrologic gradient, hydrologic conductivity, rates of flow, saturated thickness of the aquifer, and effective porosity).

(4) Presence of secondary porosity and flow characteristics, if known.

(5) Presence of mines/adits and how they affect groundwater flow and interconnectivity between different hydrogeologic units.

b. Geochemistry of groundwater in relevant aquifers (alluvium and bedrock):

(1) Background/baseline water quality.

(2) Geochemical field parameters (dissolved oxygen (DO), oxidation reduction potential (ORP), pH, temperature, etc.).

(3) Geochemical interaction between groundwater and contaminant matrix.

(4) Anion/cations.

(5) Contaminants of Potential Concern (COPC) analysis: Radionuclides, metals, Volatile Organic Compounds (VOCs), Semi Volatile Organic Compounds (SVOCs), and any others.

c. Characterization of contaminants (alluvium and bedrock):

(1) Lateral and vertical extent of all COPCs (saturated zone, unsaturated zone, source).

(2) Adequate characterization of groundwater – matrix interactions with respect to COPCs.

(3) Demonstration of adequate monitoring:

i. Wells situated in, and outside of, the plume to define extent and monitor contaminant trends (e.g., performance monitoring, point of compliance monitoring, sentinel monitoring, leak detection monitoring).

ii. Appropriate well design (e.g., screen placement and length).

(4) Demonstration of adequate historical data analysis:

i. Water level and groundwater flow trends over time.

ii. Water quality trends over time (in conjunction with 4(i) above).

iii. Analysis of parameters and analytes that might influence migration and monitored natural attenuation (MNA) parameters.

iv. Groundwater modeling using programs such as:

(a) MAROS.

(b) MODFLOW.

d. Characterization of Impact to Surface Waters. Development of hydrogeologic conceptual site model to visualize source, extent, migration pathways, influence of lithology and structure on groundwater flow and contaminant distribution, etc.

e. Characterization for screening potential remedial action technologies.

f. Characterization of Data Adequacy. Historical and current sampling and analysis plans and quality assurance project plans to support current and historical data collection.

5.2 Surface and Sub-Surface Soils

a. Understanding of the nature and extent of surface and sub-surface contamination.

b. Lateral and vertical extent of contamination in OU1, OU2 (to the extent not addressed in the Lincoln Park ROD) and OU3.

c. Lateral and vertical extent of all COPCs, radionuclides, metals, VOCs, SVOCs, and others (saturated zone, unsaturated zone, at the source).

d. Background/baseline soil quality data.

e. Demonstration of adequate historical data analysis.

(1)Historical and current sampling and analysis plans and quality assurance project plans to support current and historical data collection.

(2)Appropriate quality assurance and quality control.

(3)Appropriate sampling methods.

5.3 Other Existing Remedial Investigation Information to be Assembled

a. Air monitoring – indoor and outdoor air sampling.

b. Information for developing future land use assumptions:[2]

(1)Property zoning.

(2)Property owner's views on future land use.

(3)Institutional controls.

c. Site characterization data.

(1)Ecological resources reconnaissance.

(2)Well inventory.

(3)Impoundment radon gas emission sampling.

(4)Sub-surface geophysical survey.

(5)Surface water sampling.

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[2] See EPA Memo entitled: "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," which can be found at: http://www.epa.gov/superfund/programs/recycle/pdf/reusefinal.pdf

(6)Soil sampling.

(7)Sediment sampling.

(8)Leachate sampling.

(9)Geotechnical survey.

d. Ecological characterization:

(1)Wetland and habitat delineation/function and value assessment.

(2)Wildlife observations.

(3)Identification of endangered species and other species of concern.

(4)Bioaccumulation studies.

(5)Biota sampling/population studies.

6. REVISED QUALITY ASSURANCE PROJECT PLAN (QAPP)

Respondent shall revise its CDPHE-approved August 6, 2009 "QAPP for Environmental and Occupational Sampling and Monitoring Studies for the Cotter Corp, Cañon City Milling Facility and Lincoln Park, CO Superfund Site." In revising this document, Respondent shall complete and provide the Agencies with the most current EPA Region 8 QA Document Review Crosswalk. Respondent's revised QAPP shall also comply with "EPA Requirements for Quality Assurance Plans (QA/R-5)" that are included in EPA's "Guidance for Quality Assurance Plans (QA/G-5)." The above-referenced EPA documents are available at: http://www.epa.gov/region8/qa/reference.html. Submission and approval of the QAPP shall proceed pursuant to Section IX of the Settlement Agreement.

7. DATA SUMMARY TECHNICAL ASSESSMENT ADDRESSING ALL MEDIA

Respondent shall draft a data summary technical assessment (Data Summary Technical Assessment) summarizing existing data in a manner designed to help the Agencies determine which data meet QAPP requirements and can be used in the RI and risk assessment. As part of producing the Data Summary Technical Assessment:

7.1 Respondent shall submit to the Agencies:

a. A complete set of existing data for all media.

b. A recommendation regarding which data meet QAPP requirements.

c. A brief explanation of how the data meet QAPP requirements.

7.2 CDPHE, EPA and Respondent shall meet to discuss Respondent's recommendations and what, if any, data gaps need to be addressed.

Submission and approval of the Data Summary Technical Assessment shall proceed pursuant to Section IX of the Settlement Agreement.

8. WORK PLAN FOR VERIFICATION OF EXISTING DATA AND COLLECTION OF ADDITIONAL DATA

8.1 Health and Safety Plan.

Respondent shall prepare a health and safety plan (Health and Safety Plan) and submit it to the Agencies in accordance with the schedule established by the Agencies. As between the Parties, Respondent is solely responsible for ensuring the health and safety of its employees and/or contractors performing any of the work described in this SOW. Submission and approval of the Health and Safety Plan shall proceed pursuant to Section IX of the Settlement Agreement.

8.2 Draft RI Report based on existing data.

Respondent shall evaluate existing information and data and identify data gaps, if any, that must be addressed to adequately complete characterization of the nature and extent of contamination within the Site, to characterize threats to the public health, welfare, or the environment, or to identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances at the Site. Respondent shall submit to the Agencies a draft RI report based on existing data (Draft RI Report) consistent with Table 3-13, "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (OSWER Directive 9355.3-01, October 1988) that references existing data and information to the extent available and identifies any and all data gaps. Submission and approval of the Draft RI Report shall proceed pursuant to Section IX of the Settlement Agreement.

8.3 RI/FS Work Plan.

Within sixty (60) days of receipt of the Agencies' approval of the Draft RI Report, Respondent shall submit a RI/FS work plan (RI/FS Work Plan) for the verification of existing data and collection of additional data necessary to fill any data gap. The RI/FS Work Plan shall include a detailed description of the technical approach for the RI/FS activities, specifying each proposed phase, the necessary procedures, deliverables, and schedules for completion of each major RI/FS activity and deliverable. The RI/FS Work Plan shall refer to Table 2-3, "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (OSWER Directive 9355.3-01, October 1988). Submission and approval of the RI/FS Work Plan shall proceed pursuant to Section IX of the Settlement Agreement.

8.3.1 Development and implementation of sampling and analysis plans.

a. Scoping Meeting.

All additional sampling and field work shall be conducted in accordance with approved sampling and analysis plans (SAPs). Respondent shall convene a scoping meeting with the Agencies as the first step in the development of the SAP for each phase of the RI. Respondent shall coordinate with the Agencies to determine the date and time for the scoping meeting.

b. Development of SAPs.

For any given RI, within thirty (30) days following the scoping meeting referenced in section 8.3.1a, Respondent shall submit a phase I SAP (Phase I SAP) to the Agencies. The Phase I SAP and any subsequent SAPs shall include a description of the goals for the specific phase, a list of key personnel and responsibilities, data quality objectives (DQOs), field sampling plans, QAPP requirements, data management requirements and schedules. The Phase I SAP shall describe the sampling program including the rationale, number, type, and location of samples, the sample collection, handling and custody procedures, the required field documentation and the required analytical methods. Quality assurance procedures in the Phase I SAP shall describe the measures necessary to generate data of sufficient quality to achieve the DQOs. The Phase I SAP will specify any special training requirements, certifications, and quality control requirements for field activities, analytical processes and data validation requirements, and include a health and safety plan.

Submission and approval of the Phase I SAP shall proceed pursuant to Section IX of the Settlement Agreement. The SAPs for any subsequent phases of the RI/FS will be developed following this same process. The SAPs will be developed in a format consistent with the QAPP and EPA guidance. Respondent shall fully implement the Agencies' QA requirements by addressing all R-5 requirements within the QAPP work sheets.

c. Access, Scheduling and Analysis.

Pursuant to Section X of the Settlement Agreement, Respondent shall use best efforts to obtain access to properties for sampling and shall implement each SAP approved by the Agencies in accordance with the schedule included in the SAP. Respondent shall arrange for analytical data from laboratories to be reported in the format compatible with the project database and as specified in the SAP. Respondent will perform all required data validation described in the SAP. EPA may perform data validation in addition to the validation required to be performed by Respondent as described in the SAP.

d. Documentation of Field and Laboratory Activities.

Respondent shall consistently document and adequately record in well maintained field logs and laboratory reports information gathered during implementation of each SAP. The method(s) of documentation shall be consistent with that specified in the SAP. Respondent shall use field logs to document observations, measurements, and events that occur during field activities. Respondent shall ensure that laboratory reports document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, non-conformity events, corrective measures, and/or data deficiencies.

Respondent shall maintain field reports and sample shipment records. Analytical results developed under the SAPs that are included in RI reports shall be accompanied by, or cross-referenced to, a corresponding QAPP data summary. All required QAPP data summary analyses shall be completed and evaluated before analytical results are included in any phase of the RI or risk assessment.

Respondent shall establish an information security system to safeguard field logs, field data sheets, laboratory reports, chain of custody forms and other project records to prevent loss, damage, or alteration of project documentation. Respondent shall submit a written description of the information security system to the Agencies. Submission and approval of the written description of the information security system shall proceed pursuant to Section IX of the Settlement Agreement.

e. Summary Reports.

For each sampling event to support the RI/FS, Respondent shall prepare a summary report describing the implementation of the SAP for that phase. Each summary report shall include the field documentation specified in the SAP, a description of the physical characteristics of the study area, results of all required field quality control procedures, and results of all field and laboratory audits performed by Respondent as specified in the SAP. Respondent shall submit a summary report for each phase of sampling to the Agencies. Submission and approval of each summary report shall proceed pursuant to Section IX of the Settlement Agreement.

8.4 Sampling by the Agencies.

In the event that the Agencies independently collect samples or other information from the Site to support the RI/FS, the Agencies will notify Respondent at least seven (7) days prior to the sampling event and allow Respondent to obtain split samples of samples collected by the Agencies. The Agencies will use sampling methods identified in the QAPP or another method that can obtain samples which can be accurately compared to those collected under the QAPP.

8.5 Risk Assessment.

EPA, in consultation with CDPHE, shall deliver a baseline human health risk assessment report (Baseline Human Health Risk Assessment Report) and an ecological risk assessment report (Ecological Risk Assessment Report) based on data collected and/or verified in accordance with the RI/FS Work Plan and using approaches that are consistent with EPA guidance (both EPA Headquarters and Region 8-specific guidance). EPA shall provide Respondent with the Baseline Human Health Risk Assessment Report and the Ecological Risk Assessment Report and allow Respondent thirty (30) days upon receipt of each such document to provide comments. After consideration of such comments, EPA shall finalize and deliver to the Respondent the Baseline Human Health Risk Assessment Report and the Ecological Risk Assessment Report.

8.6 Technical Memorandum Regarding Modeling.

Where the Agencies inform Respondent that modeling is appropriate, such models shall be identified in a technical memorandum (Technical Memorandum Regarding Modeling) submitted to the Agencies for review and approval prior to their use. Submission and approval of the Technical Memorandum Regarding Modeling shall proceed pursuant to Section IX of the Settlement Agreement. All technical data and programming used in such modeling, including any proprietary programs, shall be made available to the Agencies.

8.7 Final RI Report.

After the SAP for the final phase of the Draft RI Report has been implemented and data have been received and validated, Respondent shall prepare a final RI report (Final RI Report). Respondent shall refer to Table 3-13, "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive 9355.3-01, October 1988) for a suggested RI report format.

Within the Final RI Report, Respondent shall summarize results of field activities, and analyze and evaluate the data to describe the following:

- Physical, chemical, and biological characteristics of the Site.
- Contaminant source characteristics (including chemical characteristics).
- Nature and extent of contamination.
- Contaminant fate and transport.

The Final RI Report will include the actual and potential magnitude of releases from the sources, and the horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Submission and approval of the Final RI Report shall proceed pursuant to Section IX of the Settlement Agreement.

8.8 Applicable and Relevant and Appropriate Requirements (ARARs).

Respondent will develop a draft list of potential State and federal ARARs based on the information provided in the Final RI Report, the Baseline Human Health Risk Assessment Report and the Ecological Risk Assessment Report. Respondent will submit an ARARs technical memorandum (ARARs Technical Memorandum) to the Agencies. Submission and approval of the ARARs Technical Memorandum shall proceed pursuant to Section IX of the Settlement Agreement. The approved ARARs Technical Memorandum will be included in the Technical Memorandum Documenting Initial Screening of Technology Types and Process Options (defined in Section 9.2).

9. DEVELOPMENT AND SCREENING OF REMEDIAL ALTERNATIVES

Respondent shall perform the following activities to complete the development and screening of remedial alternatives.

9.1 Develop General Response Actions.

The Agencies shall develop and provide to Respondent remedial action objectives (RAOs). For each environmental medium for which RAOs have been developed by the Agencies, Respondent shall make an initial determination of areas or volumes to which general response actions (GRAs) may apply, taking into account Site conditions, the nature and extent of contamination, and acceptable exposure levels and potential exposure routes identified in the RAOs.

Within sixty (60) days of receiving the RAOs from the Agencies, or within such other time period as determined by the Agencies, Respondent shall develop GRAs that will satisfy the RAOs. GRAs may include treatment, containment, excavation, extraction, disposal, institutional controls, or a combination of these.

9.2 Identify and Screen Remedial Technology Types and Process Options.

Respondent shall identify and evaluate remedial technology types and process options applicable to each GRA. The term "technology types" refers to general categories of technologies. The term "process options" refers to specific processes within each technology type. Several broad technology types may be identified for each GRA and numerous technology process options may exist within each technology type.

Respondent shall use information from the Final RI Report on contaminant types and concentrations and Site characteristics to screen out technology types and process options that cannot be effectively implemented at the Site. Respondent shall provide the Agencies with a technical memorandum documenting initial screening of technology types and process options (Technical Memorandum Documenting Initial Screening of Technology Types and Process Options). Respondent shall document in the Technical Memorandum Documenting Initial Screening of Technology Types and Process Options the results of the initial determination of areas or volumes for each environmental medium for which RAOs have been developed, the identification of

GRAs, and the initial screening of technology types and process options. Respondent shall refer to Figures 4-4 and 4-5 in the "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive 9355.3-01, October 1988) for examples of figures that may be used to summarize the initial screening of technology types and process options and the evaluation of process options. Submission and approval of the Technical Memorandum Documenting Initial Screening of Technology Types and Process Options shall proceed pursuant to Section IX of the Settlement Agreement.

9.3 Assemble and Document Alternatives.

Respondent shall assemble selected representative technologies into alternatives that represent a range of treatment and containment combinations that will address the RAOs for the Site as developed by the Agencies. Respondent shall specify the reasons for eliminating alternatives during the preliminary screening process.

9.4 Alternative Screening and Selection of Alternatives for Detailed Analysis.

Respondent shall perform a screening of each remedial alternative selected in section 9.3 based on effectiveness, implementability, and cost. As appropriate, the screening will preserve the range of treatment and containment alternatives that were initially developed. The range of remaining alternatives will include options that use treatment technologies and permanent solutions to the maximum extent practicable.

9.5 Development and Screening of Alternatives.

Respondent shall prepare a technical memorandum summarizing the work performed in the development and screening of alternatives (Development and Screening of Alternatives Technical Memorandum) and the results of each subtask described in this section including:

- A description of the GRAs and the areas or volumes of contaminated media to which they apply.
- A description of the remedial technology types and process options applicable to each GRA.
- The results of the initial screening of remedial technology types and process options.
- A description of the remedial alternatives.
- The results of the screening of alternatives based on effectiveness, implementability, and cost.
- A description of the alternatives that remain after screening and the action-specific State and federal ARARs for each alternative.

Submission and approval of the Development and Screening of Alternatives Technical Memorandum shall proceed pursuant to Section IX of the Settlement Agreement. The Agencies shall consider how any selected alternative may affect termination of the License pursuant to the termination process under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.

10. TREATABILITY STUDIES

Should existing Site treatment data be insufficient to adequately evaluate alternatives, treatability tests may be necessary to evaluate a particular technology on specific Site wastes. The Agencies may require Respondent to perform treatability studies to provide sufficient data to allow treatment alternatives to be fully developed and evaluated during the FS and/or to reduce the cost and performance uncertainties for treatment alternatives to levels sufficient to allow EPA, after consultation with CDPHE, to select a remedy. Where the Agencies have determined that treatability studies are required and have notified Respondent in writing, and unless Respondent can demonstrate to the Agencies' satisfaction that they are not needed, Respondent shall submit to the Agencies a treatability studies work plan (Treatability Studies Work Plan) conforming to the DQO and SAP requirements of the QAPP. Submission and approval of the Treatability Studies Work Plan shall proceed pursuant to Section IX of the Settlement Agreement including the framework for deliverables set out in Section 15 of this SOW.

The Treatability Studies Work Plan shall describe the type of treatability study to be performed (e.g., bench scale or pilot scale) and shall include:

- A discussion of background information.
- A list of key personnel and responsibilities.
- A description of the remedial technologies to be tested.
- DQOs for each test including measurements of performance.
- The experimental procedures for each test.
- A SAP which describes the samples to be collected, sample collection procedures, sample handling and tracking procedures, quality assurance requirements, and analytical methods.
- A data management plan.
- A health and safety plan.
- A plan for management of Waste Material generated during the treatability tests.
- A schedule.

Respondent shall analyze and interpret the study results obtained from implementation of the Treatability Studies Work Plan in a treatability studies technical report (Treatability Studies Technical Report), which shall be submitted to the Agencies. In the Treatability Studies Technical Report, Respondent shall evaluate the effectiveness, implementability, and cost of each technology and compare test results with predicted results. Respondent shall also evaluate full-scale application of the technology including a sensitivity analysis identifying key parameters affecting full-scale operation. Submission and approval of the Treatability Studies Technical Report shall proceed pursuant to Section IX of the Settlement Agreement.

11. DETAILED ANALYSIS OF ALTERNATIVES

Upon the Agencies' approval of the Development and Screening of Alternatives Technical Memorandum and, if applicable, the Treatability Studies Technical Report, Respondent shall perform a detailed analysis of the remaining remedial alternatives. The

detailed analysis shall be sufficient to allow the Agencies to adequately compare the alternatives, select a remedial action, and demonstrate satisfaction of the CERCLA statutory remedy selection requirements (§ 121(b)(1)(A) of CERCLA).

Respondent shall assess each alternative against the following seven (7) of the nine (9) evaluation criteria contained in the NCP (40 CFR section 300.430(e)(9)(iii)):

1. Overall protection of human health and the environment.
2. Compliance with ARARs.
3. Long term effectiveness and permanence.
4. Reduction of toxicity, mobility, or volume through treatment.
5. Short-term effectiveness.
6. Implementability.
7. Cost.

Respondent shall conduct the detailed analysis of alternatives by evaluating each alternative against the seven (7) evaluation criteria above and then perform a comparative analysis between remedial alternatives. That is, each alternative shall be compared against the others using the evaluation criteria as a basis of comparison.

12. FEASIBILITY STUDY REPORT

Respondent shall prepare an FS Report (FS Report) that summarizes the development and screening of remedial alternatives and the detailed analysis of alternatives. Respondent shall refer to the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (OSWER Directive 9355.3-01, October 1988) for an outline of the FS report format and the required report content. Submission and approval of the FS Report shall proceed pursuant to Section IX of the Settlement Agreement. Identification and selection of the preferred alternative are reserved by EPA and CDPHE.

13. COMMUNITY INVOLVEMENT

The Agencies will develop and implement community relations activities for the Site and the RI/FS. Respondent shall, as requested by the Agencies and with reasonable notification, assist the Agencies by providing information regarding the Site history, participating in public meetings, developing graphics, placing newspaper ads developed by the Agencies, or distributing fact sheets developed by the Agencies. All Respondent's community relations activities that are initiated by the State, EPA, or the established community advisory group for the Site will be the subject of oversight by the Agencies.

14. ADDITIONAL GENERAL REQUIREMENTS

14.1 Personnel.

All Work performed shall be under the direction and supervision of qualified personnel. As soon as practicable prior to beginning the collection of any data, Respondent shall notify the Agencies in writing of the names, titles, and qualifications of the personnel, including those of contractors and laboratories, to be used in carrying

out the Work, which shall be subject to the Agencies' review, for verification that such persons meet minimum technical background and experience requirements. Respondent shall demonstrate that a proposed contractor will operate under a quality system that complies with ANSI/ASQC E4-1994 "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or most recent version) by submitting a copy of such Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation that is acceptable to the Agencies. The qualifications of the persons collecting additional data for Respondent shall be subject to the Agencies' review or verification that such persons meet minimum technical background and experience requirements. If the Agencies disapprove in writing of any person's technical qualifications, Respondent shall notify the Agencies of the identity and qualifications of the replacements within thirty (30) days of receiving such written notice. No Work can be undertaken by a contractor or laboratory until the qualifications of that contractor or laboratory have been approved by the Agencies. If Respondent is unable to obtain a contractor that the Agencies approve, the Agencies reserve the right to conduct that portion of the Work such contractor was intended to perform. If Respondent is unable to obtain a contractor that the Agencies can approve, and the Agencies conduct all or a portion of the Work, Respondent will cooperate with the Agencies, including but not limited to providing access to the Site and any existing data and other information relevant to the Work. During the course of the Work, Respondent shall notify the Agencies in writing of any changes or additions in the personnel used to carry out the Work, providing their names, titles, and qualifications. The Agencies shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification. In the event of a dispute, Respondent may seek dispute resolution pursuant to the Dispute Resolution provisions in Section XIII of the Settlement Agreement.

14.2 Quality Assurance, Sampling, and Access to Information.

Respondent shall assure that all Work performed, samples taken, and analyses conducted conform to the requirements of this SOW, the QAPP, and guidance identified therein. Respondent will assure that the field personnel it uses are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by the Agencies.

All results of sampling, tests, modeling, or other data (including raw data) relating to the Work generated by Respondent, or on Respondent's behalf, during the period the Settlement Agreement is effective, shall be submitted to the Agencies in quarterly progress reports. The Agencies will make available to Respondent validated data generated by the Agencies unless it is exempt from disclosure by any federal or State law or regulation.

Respondent shall verbally notify the Agencies at least thirty (30) days prior to conducting significant field events as described in this SOW, any work plan, scope of work, or any SAP. At the Agencies' written request, or the written request of the individual hired by EPA to assist EPA in its oversight and review of the conduct of the RI/FS (EPA Oversight Assistant, as referenced in Paragraph 35 of the Settlement Agreement), Respondent shall allow split or duplicate samples to be taken by the Agencies (and/or their authorized representatives) of any samples collected in implementing the Settlement Agreement. All split samples taken by, or on behalf of, Respondent shall be analyzed by the methods identified in the QAPP.

14.3 Off-Site Shipment of Waste Material.

Respondent may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Managers and State Project Manager. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed ten (10) cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall notify the state environmental official referenced above, the EPA Remedial Project Managers, and the State Project Manager of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent will provide such written notice before the Waste Material is shipped.

14.4 Additional Work.

The Agencies may determine in writing that, in addition to tasks defined and initially approved in a work plan, additional Work may be necessary to accomplish the objectives of the RI/FS. Subject to the dispute resolution process, Respondent agrees to perform these response actions in addition to those required by the initially-approved RI/FS Work Plan, including any approved modifications, if the Agencies determine that such actions are necessary for the RI/FS.

Respondent shall confirm its willingness to perform the additional Work in writing to the Agencies within fourteen (14) days after receiving the Agencies' written request. If Respondent objects to any modification determined by the Agencies to be necessary, Respondent may seek dispute resolution pursuant to the provisions of the

Settlement Agreement. This SOW and/or the RI/FS Work Plan shall be modified according to the final resolution of the dispute.

Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by the Agencies in a written modification to a work plan or written work plan supplement. The Agencies reserve the right to conduct the Work themselves at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

15. FRAMEWORK FOR DELIVERABLES

Respondent shall deliver documents and perform activities described in this SOW in accordance with the following framework. Detailed schedules for deliverables for each OU will be established in the RI/FS Work Plan for each OU. The EPA Project Manager and the State Project Manager may extend delivery dates for good cause for up to sixty (60) days. Any such extension must be in writing.

SOW REFERENCE	DOCUMENT OR ACTIVITY
Section 3	Meeting or conversation summaries
Section 5	Assemble existing information relevant to the RI/FS
Section 6	QAPP
Section 7	Data Summary Technical Assessment
Section 8.1	Health and Safety Plan
Section 8.2	Draft RI Report
Section 8.3	RI/FS Work Plan
Section 8.3.1.a.	Convene scoping meeting
Section 8.3.1.b.	Phase I SAP
Section 8.3.1.b.	SAPs for additional phases
Section 8.3.1.d.	Written description of information security system
Section 8.3.1.e.	Summary reports for each phase of sampling
Section 8.6	Technical Memorandum Regarding Modeling
Section 8.7	Final RI Report
Section 8.8.2	ARARs Technical Memorandum
Section 9.2	Technical Memorandum Documenting Initial Screening of Technology Types and Process Options
Section 9.5	Development and Screening of Alternatives Technical Memorandum
Section 10	Treatability Studies Work Plan (if necessary)
Section 10	Treatability Studies Technical Report (if necessary)
Section 12	FS Report