

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

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IN THE MATTER OF:  
U.S. OIL RECOVERY SUPERFUND SITE  
400 NORTH RICHEY AREA  
Pasadena, Harris County, Texas

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 6  
CERCLA Docket No. 06-11-16

Settling Respondents

Proceeding Under Sections 104, 106(a), 107  
and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, as amended, 42 U.S.C. §§  
9604, 9607 and 9622.

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
FOR REMOVAL ACTION

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Settling Respondents listed in Appendix A ("Settling Respondents"). The U.S. Oil Recovery Superfund Site is generally located at 400 North Richey St. and 200 North Richey St., respectively, Pasadena, Harris County, Texas. The Settlement Agreement concerns the performance by Settling Respondents of a removal action for the 400 North Richey Area of the U.S. Oil Recovery Superfund Site, located at 400 North Richey Street, Pasadena, Harris County, Texas (hereinafter referred to as "Site") and the reimbursement for Future Response Costs, as defined herein, incurred by EPA

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA").

3. The State of Texas, acting by and through the Texas Commission on Environmental Quality ("TCEQ"), repeatedly requested assistance from EPA to stabilize and manage wastes at the Site, after unsuccessfully seeking, in conjunction with Harris County, to have the owner(s)/operator(s) remove the wastes from the Site. Therefore, the State of Texas has notice of this action, and EPA has formally notified the State of Texas (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Settling Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Settling Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Respondents do not admit, and retain 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 in Sections IV and V of this Settlement Agreement. Settling Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

## II. PARTIES BOUND

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

6. Settling Respondents are jointly and severally liable to EPA for carrying out all activities set forth in Appendices D and E required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Settling Respondents to implement the requirements of this Settlement Agreement, the remaining Settling Respondents shall complete all such requirements.

7. Settling Respondents shall ensure that their contractors, subcontractors, and consultants which are retained to conduct the Work set forth in Appendices D and E to be performed under this Settlement Agreement receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Settling Respondents shall be responsible for any noncompliance in conducting the Work set forth in Appendices D and E required by this Settlement Agreement.

## III. DEFINITIONS

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

a. "August 25, 2011 AOC" shall mean the Administrative Settlement Agreement and Order on Consent for a Time-Critical Removal Action, CERCLA Docket No. EPA-HQ-SFUND-2011-0653-0012, effective August 25, 2011 and all amendments and addenda thereto.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

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

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXIII. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "TCEQ" shall mean the Texas Commission on Environmental Quality and any successor departments or agencies of the State with jurisdiction over the alleged contamination at the Site.

f. "Future Response Costs" shall mean all costs, not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date of this Settlement Agreement in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 35 (costs and attorney fees and any monies paid to non-liable parties to secure access, including the amount of just compensation), Paragraph 43 (emergency response), and Paragraph 71 (Work Takeover). Future Response Costs shall not include costs incurred: (1) by the United States for work not covered by the Work Plans (Appendices D and E), (2) by the United States for any Remedial Investigation/Feasibility Study ("RI/FS"), (3) by the United States for any future Remedial Design/Remedial Action ("RD/RA") or any other remedial actions at or in connection with the Site or (4) directly by the State using State-appropriated funds and billed directly by the State, at or in connection with the Site.

g. "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, 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.

h. "May 14, 2015 AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, CERCLA Docket No. 06-03-15, effective May 14, 2015 and all amendments and addenda thereto which provides that the RI/FS Work Plan shall include a schedule that coordinates the on-site Work so as to avoid any potential interference.

i. "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.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA and the Settling Respondents.

l. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq.

m. "Receiver" shall mean the person who is appointed as the receiver over the Site by order of the 125th State District Court in Harris County, Texas or any subsequent court with jurisdiction over the receivership at the Site. The receiver as of the effective date of the Settlement Agreement is Eva Engelhart who was appointed on May 22, 2012. A copy of the order appointing the receiver is attached as Appendix C.

n. "Removal Action" shall mean the activities conducted pursuant to this Settlement Agreement and the August 25, 2011 AOC.

o. "Settling Respondents" shall mean those Settling Respondents identified in Appendix A, incorporated herein by reference, and any additional Party(ies) who may enter into this Settlement Agreement in the future after its effective date.

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

q. "Settlement Agreement" shall mean this Administrative Settlement Agreement on Consent, and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "State" shall mean the State of Texas.

s. "Site" shall mean that portion of the U.S. Oil Recovery Superfund Site located at 400 North Richey Street, Pasadena, Harris County, Texas and depicted generally on the map attached as Appendix B.

t. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) "solid waste" under Section 1004(27) of RCRA 42 U.S.C. § 6903(27) or Section 361.003 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code § 361.003.

u. "Work" shall mean all activities Settling Respondents are required to perform under this Settlement Agreement, except those required by Section XI (Records Retention).

#### IV. FINDINGS OF FACT

9. The Site property is located at 400 North Richey Street in Pasadena, Harris County, Texas, 77506. The approximately 12.2 acre property was most recently used as a used oil processing and waste treatment facility. The property was abandoned by its owner(s) and is now under the custody and control of the Receiver. An office building, security guard shack, and large warehouse (approximately 25,000 square feet in size) are present on the property. The warehouse includes a laboratory, machine shop, and parts warehouse. A tank farm with

approximately 24 aboveground storage tanks containing industrial wastes is located on the north end of the warehouse. A containment pond is located west of the warehouse. Approximately 225 roll-off boxes and two frac tanks are located on the property. The property is located in a highly industrial area that also includes commercial and residential land use.

10. U.S. Oil Recovery L.P. began operations on the property in approximately June 2003 and U.S. Oil Recovery L.L.P. acquired the property in December 2004. Prior to 2004, multiple businesses operated on the property including chemical manufacturing companies (specializing in fertilizers and/or herbicides/pesticides), a cow hide exporter, leather tanner, and companies with unknown operations including storage of various hard goods.

11. U.S. Oil Recovery L.P. received municipal and industrial Class I and Class II wastewater, characteristically hazardous waste, used oil and oily sludges, and municipal solid waste at the Site. The State, on behalf of the TCEQ, and Harris County obtained an injunction requiring the owner(s)/operator(s) to clean up the Site, with which the owner(s)/operator(s) failed to comply. The owner(s)/operator(s) ceased operations in June of 2010. In July 2010, the State, on behalf of the TCEQ, and Harris County sought and obtained the appointment of a receiver.

12. In July 2010, the TCEQ and Harris County, through the Harris County Public Health and Environmental Services, contacted EPA requesting assistance in stabilizing the Site and managing the large volume of hazardous substances and waste at the Site. On November 8, 2010, the TCEQ requested from EPA additional response assistance. EPA and TCEQ agreed that the TCEQ would take custody and control of the Site records.

13. Hazardous substances present at the property and in waste materials previously handled at the property include volatile organic compounds, semi-volatile organic compounds, pesticides, herbicides, and metals.

14. Emergency response and removal actions were performed by EPA in 2010 and 2011, and included general site stabilization; removal of contaminated wastewater from various holding areas; on-site treatment, disposal or recycling of contaminated wastewater; and stabilization and classification of drums, frac tanks, totes and roll-off boxes.

15. A group of potentially responsible parties ("PRPs") entered into the August 25, 2011 AOC ("US Oil Recovery Site PRP Group") to take over and perform site stabilization activities at the Site and additional removal actions described in EPA-approved work plans. EPA approved the performance of the following tasks pursuant to the August 25, 2011 AOC: (1) bioreactor content removal, decontamination, and demolition; (2) roll-off box content removal and decontamination; (3) drum and tote removal and disposal; and (4) above ground storage tanks liquids removal and disposal. Settling Respondents have implemented and completed the above tasks under EPA oversight and in accordance with the approved work plans.

16. On September 14, 2011, EPA issued a Non-Interference Unilateral Administrative Settlement Agreement ("UAO") to certain parties, including the owner/ operator of the Site property, to prevent any of their on-site activities from interfering with the ongoing site-stabilization effort and additional removal actions.

17. On May 22, 2012, Eva Engelhart was appointed as Receiver for U.S. Oil Recovery, L.P. f/k/a U.S. Oil Recovery LLC, MCC Recycling LLP f/k/a US Oil Recovery #2, LLP, U.S. Oil Recovery L.L.P. (Texas Secretary of State Registration No. 800159885), U.S. Oil Recovery L.L.P. (Texas Secretary of State Registration No. 800458414) by order of the 125<sup>th</sup> State District Court in Harris County, Texas. Pursuant to this order, all real or personal property of these entities is in the custody and control of the Receiver, including the Site. The Receiver's duties include, but are not limited to negotiating and granting access to the Site, assisting the U.S. Oil Recovery Site PRP Group in connection with the cost-effective remediation of the Site as well as protecting and marketing the Site's assets. The Receiver has current custody and control over the Site, and is identified as a Settling Respondent solely for purposes of access to the Site and the imposition of future institutional controls, if any, for the Site.

18. The Site was listed on the National Priorities List ("NPL") pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 18, 2012.

19. A group of potentially responsible parties ("PRPs") entered into the May 14, 2015 AOC which includes not only the US Oil Recovery Site PRP Group, but also a previous owner/operator of the Site. The May 14, 2015 AOC provides that the RI/FS Work Plan shall include a schedule that coordinates the on-site RI/FS Work so as to avoid any potential interference with ongoing removal actions at the Site.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, EPA has determined that:

20. The Site at 400 North Richey Street constitutes a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

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

24. Settling Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622. Each Settling Respondent is either a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Each Settling Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare or the environment, and if carried out in compliance with the terms of

this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## VI. SETTLEMENT AGREEMENT AND ORDER

26. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Settling Respondents 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. DESIGNATION OF CONTRACTORS, PROJECT COORDINATORS, AND ON-SCENE COORDINATOR

27. Selection of Contractors, Personnel. Settling Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 30 days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Settling Respondents. If EPA disapproves of a selected contractor, Settling Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 14 days of EPA's disapproval. The proposed contractor must demonstrate compliance 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 the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)." (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. Subcontractors or contractors may work under the oversight of the primary contractor's QMP and are not required to submit their own individual QMP to EPA.

28. Settling Respondents designate Eric Pastor of Pastor, Behling & Wheeler, LLC as their Project Coordinator who shall be responsible for administration of all actions by Settling Respondents required by this Settlement Agreement. The Project Coordinator's address, telephone number and e-mail are as follows:

Mr. Eric Pastor  
Pastor, Behling & Wheeler, LLC  
2201 Double Creek Drive, Suite 4004  
Round Rock, Texas 78664  
(512) 671-3434  
[eric.pastor@pbwllc.com](mailto:eric.pastor@pbwllc.com)

The Project Coordinator or his representative shall be present on Site or readily available during Site Work. EPA hereby approves the designated Project Coordinator but retains the right to

disapprove of the designated Project Coordinator in the future. If EPA disapproves of the designated Project Coordinator, Settling Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days following EPA's disapproval. Settling Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Settling Respondents shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Settling Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Settling Respondents. Documents to be submitted to the Settling Respondents shall be sent to Settling Respondents' Project Coordinator at the address shown above.

29. EPA has designated Adam Adams of EPA Region 6 as its On-Scene Coordinator ("OSC"). EPA will notify Settling Respondents of a change of its designated OSC. Except as otherwise provided in this Settlement Agreement, Settling Respondents shall direct all submissions required by this Settlement Agreement to the OSC at the US EPA Region 6, 6SF-RA, 1445 Ross Ave., Dallas, TX 75202 or by electronic mail if so directed by the OSC.

#### **VIII. WORK TO BE PERFORMED**

30. Settling Respondents shall perform all actions necessary to implement the Work Plans set forth in Appendices D and E hereby incorporated herein by reference and made a part of this Settlement Agreement. As applicable, these actions shall be performed in accordance with the Health and Safety Plan dated May 2012 and the Quality Assurance Sampling Plan dated May 2012, both of which were approved by EPA on June 6, 2012.

31. Within 60 days after completion of all Work required by this Settlement Agreement, Settling Respondents shall submit for EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.160 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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



32. Off-Site Shipment of Waste Material. Prior to any off-site shipment of Waste Material pursuant to the Work under this Settlement Agreement from the Site to an out-of-state waste management facility, Settling Respondents shall provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA's Designated OSC. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Settling Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Settling Respondents following the award of the contract for the removal action. Settling Respondents shall provide the information required by Subparagraphs 32.a and 32.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Respondents shall obtain the EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Settling Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

33. Bi-Monthly Progress Reports. Settling Respondents shall submit to the EPA Bi-Monthly Progress Reports under this Settlement Agreement which shall be due by the 15th day of every other month, beginning with the first complete month after the Effective Date until termination of this Settlement Agreement, unless otherwise directed by the OSC. These progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during the preceding two-month period, (2) include a summary of all quality assured results of sampling and tests and all other quality assured data received by Settling Respondents for the Work during the reporting period, (3) describe Work planned for the next two months, and (4) 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 regarding the Work.

## IX. SITE ACCESS

34. If the Site, or any property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Settling Respondents, such Settling Respondent(s) shall, commencing on the Effective Date, provide EPA and all of the non-owner Settling Respondents and their representatives, including 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.

35. The Receiver shall provide EPA and all of the Settling Respondents and their representatives, including contractors, with access at all reasonable times to the portions of the Site under Receiver's custody and control for the purpose of conducting any activity related to this Settlement Agreement. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than any of Settling Respondents or the Receiver, Settling Respondents shall use their best efforts to obtain all necessary access agreement within 45 days after identifying the need for such access, or as otherwise specified in writing by the OSC. For purposes of this Paragraph and Paragraph 52 (Force Majeure), "best efforts" means the reasonable efforts that a prudent person would use in similar circumstances as to accomplish the goal in a timely manner. "Best Efforts" include the payment of reasonable sums of money in consideration of access. However, no payment of any sums shall be required if the property owner is also a potentially responsible party at the Site (or that party's successor-in-interest or assignee). "Best Efforts" do not require the Settling Respondents to undertake legislative actions, eminent domain, or other legal proceedings available to the State of Texas to acquire access. Settling Respondents shall immediately notify EPA, if after using their best efforts, they are unable to obtain such agreements. Settling Respondents shall describe in writing their efforts to obtain access. If Settling Respondents cannot obtain access agreements, EPA may either (i) obtain access for Settling Respondents or assist Settling Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the Settlement Agreement. Settling Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Future Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Settling Respondents shall perform all other tasks or activities not requiring access to that property, and Settling Respondents shall reimburse EPA for all costs incurred in performing such tasks or activities. Settling Respondents shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

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

## X. ACCESS TO INFORMATION

### 37. Access to Information.

a. Subject to Subparagraphs b and c., Settling Respondents shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or consultants relating to the Work, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Respondents shall also make available to EPA and the State, for purposes of

investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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

c. Settling Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If the Settling Respondents assert such a privilege in lieu of providing documents, they shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Settling Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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 documents or information evidencing conditions at or around the Site.

## XI. RECORDS RETENTION

38. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after EPA's issuance of the written notice of the completion pursuant to Section XXX (Notice of Completion of Work) of this Settlement Agreement, each Settling Respondent or the Settling Respondents' technical or other consultant shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. By way of example and explanation, each Settling Respondent may maintain, as its sole responsibility, documents relating to any person's liability under CERCLA with respect to the Site, while the Settling Respondents' consultant may maintain, as its sole responsibility, the documents relating in any manner to the performance of the Work with respect to the Site. Settling Respondents or Settling Respondents' consultant may, if EPA approves, retain only electronic copies of records.

39. The TCEQ has custody and control of documents that were maintained at the Site by the Site owner(s)/operator(s). These documents are maintained at a secure location and access to the documents is monitored. These documents are not subject to the provisions of this Section.

40. At the conclusion of this document retention period, Settling Respondents or Settling Respondents' technical or other consultant shall notify EPA and the State at least 90 days prior to the destruction of any such documents, records or other information, and, upon request by EPA or the State, Settling Respondents shall deliver any such documents, records, or other information to EPA or the State. Settling Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege, attorney work product doctrine or any other privilege recognized by federal or state law. If Settling Respondents assert such a privilege, they shall provide EPA or the State with the following: 1) the title of the document, record, or other information; 2) the date of the document, record, or other information; 3) the name and title of the author of the document, record, or other information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or other information; and 6) the privilege or doctrine asserted by Settling Respondents. However, no documents, records or other information specifically created or generated to comply with the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

## XII. COMPLIANCE WITH OTHER LAWS

42. Settling Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARS") under federal environmental or state environmental or facility siting laws. No local, state, or federal permit 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, Settling Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

### **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

43. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action. Settling Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Settling Respondents shall also immediately notify the OSC, Adam Adams at (214) 665-2779, or, in the event of his unavailability, the Regional Duty Officer at (866) 372-7745 of the incident or Site conditions. In the event that Settling Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Settling Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Future Response Costs).

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

### **XIV. AUTHORITY OF ON-SCENE COORDINATOR**

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

### **XV. PAYMENT OF FUTURE RESPONSE COSTS**

46. Payments of Future Response Costs.

a. Settling Respondents shall pay EPA all Future Response Costs for the removal actions performed under this Settlement Agreement not inconsistent with the NCP. EPA has estimated that the amount of Future Response Costs that will be expended at this Site under this Settlement Agreement will be \$50,000. Based on this estimate, within 30 days after the Effective Date, Settling Respondents shall pay EPA \$50,000 for Future Response Costs ("Prepayment"). Settling Respondents shall make all payments required by this Paragraph 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, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and be accompanied by appropriate transmittal communication identifying the name and address of the party(ies) making payment and EPA Site/Spill ID number A6X7 and the EPA docket number for this action.

b. At the time of payment, Settling Respondents shall send notice that payment has been made to:

Chief, Enforcement Assessment Section (6SF-TE)  
US EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

And to the EPA Cincinnati Finance Office by e-mail at [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov), or by mail to:

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

c. If the Prepayment is depleted, EPA will send Settling Respondents a bill for the Future Response Costs incurred for the Site under this Settlement Agreement requiring payment. Such bills will be submitted at least on a semi-annual basis, but no sooner than every six months, and will include an unreconciled Standard Cost Accounting Report (SCORPIOS report) which contains a summary itemization of EPA's and its contractors' Future Response Costs, including costs incurred from the Prepayment for 400 North Richey, including direct and indirect costs incurred by EPA and its contractors incurred under this Settlement Agreement. Settling Respondents shall make all payments within 60 days after Settling Respondents' receipt of such bill requiring payment, except as otherwise provided in Paragraph 48, and in accordance with the procedures described in Subparagraphs 46.a & b., including without limitation the procedure for providing notice of the remittance.

d. In recognition that there are other and may be future AOCs for the Site with different potentially responsible parties, the total amount to be paid by Settling Respondents pursuant to Subparagraph 46.a. (Prepayment) and Subparagraph 46.c. (billed amounts) shall be deposited by EPA in the U.S. Oil Recovery Superfund Site Special Account within the EPA Hazardous Substances Superfund, (ii) with a separate site charging code for Future Response Cost charges unique to this Settlement Agreement, and (iii) retained and used by EPA to conduct or finance response actions at or in connection with the removal actions within the Site.

e. After EPA issues the Notice of Completion of Work pursuant to Paragraph 98 and a final accounting of the Special Account, including crediting Settling Respondents for any amounts received under Paragraphs 46.a (Prepayment) or 46.c (billed amounts), EPA will apply any unused amount as a result of payments from 46.a (Prepayment) to any other unreimbursed response costs or response actions associated with the removal actions remaining at the Site and if there are no more such removal actions at the Site, EPA shall refund the amount to the Settling Respondents. In addition, together with the refund, EPA will send Respondents an unreconciled SCORPIOS report, which includes a summary itemization of EPA and its contractors' Future Response Costs including costs incurred from the Prepayment, direct and indirect costs incurred under this Settlement Agreement. If the final accounting of the Special Account shows a credit for any amounts received under Paragraph 45.c (periodic bill), EPA may apply any unused amount as a result of payment from 45.c (periodic bill) to any other unreimbursed response costs or response actions remaining at the Site or may transfer such unused amount to the EPA Hazardous Substances Superfund. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site (from amounts paid under 45.c periodic bill) shall not be subject to challenge by Settling Respondents pursuant to dispute resolution provisions of this Settlement Agreement or in any other forum.

47. Except as set forth in Paragraph 48, if Settling Respondents do not pay Future Response Costs within sixty (60) days of Settling Respondents' receipt of a bill, Settling Respondents shall pay Interest on the unpaid balance of Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the 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 Settling Respondents' failure to make timely payments under this Section, including but not limited to payments of stipulated penalties pursuant to Section XVIII. Settling Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 46.

48. Settling Respondents may contest payment of any Future Response Costs billed under Paragraph 46 or the application of the Prepayment made under Paragraph 46.a., if they determine that EPA has made a mathematical error, or included a cost item that is not within the definition of Future Response Costs or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a provision or provisions of the NCP. Such objection shall be made in writing within forty-five (45) days of receipt of the bill or refund and accompanying reports specified in Subparagraphs 46.c. and 46.e. and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Respondents shall within sixty (60) days of Settling Respondents' receipt of the bill from EPA (1) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 46 and (2) establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Texas and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Respondents shall send to the OSC a copy of the statement and documentation evidencing payment of 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. The Settling Respondents' written objection to payment or application of the Prepayment made within forty-five (45) days of receipt of EPA's bill shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within fourteen (14) days of the resolution of the dispute, Settling Respondents shall pay the sums due (with accrued interest from the escrow account) to EPA in the manner described in Paragraph 46 or in the application of the Prepayment. Respondents shall receive nothing. If Settling Respondents prevail concerning any aspect of the contested costs, Settling Respondents shall pay that portion of the costs (plus associated accrued interest from the escrow account) for which they did not prevail to EPA in the manner described in Paragraph 46. Settling Respondents shall be disbursed any balance of the escrow account. If Respondents prevail with respect to the application of a portion of the Prepayment, Respondents shall receive a refund of that portion. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Respondents' obligation to reimburse EPA for its Future Response Costs.

#### **XVI. DISPUTE RESOLUTION**

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

50. If Settling Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 30 days (except as provided in Paragraph 48 where Settling Respondents have within forty-five (45) days of receipt of EPA's bill for Future Response Costs to notify EPA of their objections to payment) of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Respondents shall have 60 days from EPA's receipt of Settling Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension shall not be unreasonably denied and may be granted orally but must be confirmed in writing.

51. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Parties shall be afforded the opportunity within fifteen (15) days after the end of the Negotiation Period to present their respective positions in writing and through oral presentation to the EPA Region 6 Superfund Division Director who will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Settling Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section unless otherwise agreed to by EPA, and such agreement shall not be unreasonably withheld. Following resolution of the dispute, as provided by this Section, Settling Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Settling Respondents agree with the decision. In the



event that the Settling Respondents prevail on the issue in dispute, no stipulated penalties accruing for the disputed issue shall be assessed.

## XVII. FORCE MAJEURE

52. Settling Respondents agree 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 Settling Respondents or of any entity controlled by Settling Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Settling Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

53. 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, Settling Respondents shall notify EPA orally within 48 hours of when Settling Respondents first knew that the event might cause a delay. Within 14 days thereafter, Settling Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Respondents, 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 Settling Respondents 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.

54. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations, and no stipulated penalties will be assessed for the delay to the extent performance of those obligations is affected by the *force majeure* event. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Settling Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Settling Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## XVIII. STIPULATED PENALTIES

55. Settling Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 56 and 57 for failure to comply with any of the requirements of this Settlement Agreement specified below in regard to the Work set forth in Appendices D and E, unless excused under Section XVII (Force Majeure). "Compliance" by Settling Respondents

shall include completion of the Work set forth in Appendices D and E, in accordance with all applicable requirements of law, this Settlement Agreement and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

56. Settling Respondents' Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 56(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 750	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 1000	31 <sup>st</sup> day and beyond

b. Compliance Milestones

(1) Commencement of work pursuant to the schedules in the Work Plans provided in Appendices D and E of this Settlement Agreement.

(2) Completion of work pursuant to the schedules in the Work Plans provided in Appendices D and E of this Settlement Agreement.

57. Settling Respondents' Stipulated Penalty Amounts – Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit reports or other written documents pursuant to Paragraphs 31 - 33 in accordance with the schedule in this Settlement Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 750	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 1000	31 <sup>st</sup> day and beyond

58. Stipulated Penalty Amounts – Payment of Costs.

59. The following stipulated penalties shall accrue per violation per day for failure to pay Future Response Costs in accordance with the schedule in this Settlement Agreement: After the 30<sup>th</sup> day payment is not timely received, a penalty of \$250 per day will be assessed.

60. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 of Section XX (Reservation of Rights by EPA) and EPA's decision to

assume performance is upheld in dispute resolution, Settling Respondents shall be liable for a stipulated penalty in the amount of \$250,000.

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section VIII (Work to be Performed), until 16 days following receipt of notice of the deficiency by Settling Respondents (2) with respect to a decision by EPA Region Superfund Division Director designated in Paragraph 51 of Section XVI (Dispute Resolution), during the Negotiation Period until the date that the Superfund Division Director issues a final decision regarding such dispute; and (3) with respect to commencement or completion of the Plans as described in Paragraphs 56.b. above, if the failure to commence or complete the Work under the Plans is due to any action or inaction by EPA that delays such commencement or completion.

62. Following EPA's determination that Settling Respondents have failed to comply with a requirement of this Settlement Agreement, EPA shall give Settling Respondents written notification of the same and describe the noncompliance. EPA may send Settling Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph only in the event that EPA has provided Settling Respondents written notification of noncompliance.

63. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Settling Respondents' receipt from EPA of a demand for payment of the penalties, unless Settling Respondents invoke the dispute resolution procedures in accordance with Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by Electronic Funds Transfer ("EFT") in accordance with the instructions in Paragraph 46. A statement accompanying the EFT payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A6X7, the EPA Docket Number 06-11-16, and the name and address of the party(ies) making payment. Settling Respondents shall send notice that payment has been made to EPA as provided in Paragraph 46.b., and to Ms. Cynthia Brown, U.S. EPA Region 6, 6SF-TE, 1445 Ross Avenue, Dallas, TX 75202.

64. The payment of penalties shall not alter in any way Settling Respondents' obligation to complete performance of the Work.

65. Penalties shall continue to accrue as provided in Paragraphs 61 and 62 during any dispute resolution period, but need not be paid until thirty (30) days after the dispute is resolved by agreement or by receipt of EPA's decision.

66. If Settling Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Settling Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 62.

67. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by

virtue of Settling Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 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 herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 71. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

#### **XIX. COVENANT NOT TO SUE OR TAKE ADMINISTRATIVE ACTION BY EPA**

68. In consideration of the actions that will be performed and the payments that will be made by Settling Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the EPA covenants not to sue or to take administrative action against Settling Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Settling Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Settling Respondents and their successors and assigns and does not extend to any other person.

#### **XX. RESERVATION OF RIGHTS BY EPA**

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

70. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Respondents with respect to all other matters, including, but not limited claims based on a failure by Settling Respondents to meet a requirement of this Settlement Agreement;

- a. liability for costs not included within the definition of Future Response Costs;
- b. liability for performance of response action other than the Work;

- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- f. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site, except to the extent reimbursed under this Settlement Agreement.

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

72. In the event EPA assumes the performance of all or any portion of the Work, EPA shall notify Settling Respondents in writing. Such takeover notification shall identify that all or a specifically designated portion of the Work shall be assumed by EPA. Stipulated penalties for violations of the Settlement Agreement directly relating to the Work assumed by EPA shall continue to accrue only until the earlier of (1) the date upon which EPA, or another party pursuant to an agreement with or ordered by EPA, commences performance of that Work or (2) if EPA Work Takeover is not delayed by actions of the Settling Respondents, including but not limited to invocation of dispute resolution pursuant to Section XVI to prevent takeover, 30 days from the Settling Respondents' receipt of the takeover notice.

## **XXI. COVENANT NOT TO SUE BY SETTLING RESPONDENTS**

73. Except as provided in Paragraphs 74 through 78 Settling Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its 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 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 the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Texas Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs unless the United States or department or agency of the United States is identified as a "Potentially Responsible Party" at the Site.

74. 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 Paragraphs 70(a)-(b), and (d) - (f), but only to the extent that Settling Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. 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. RESERVATION OF RIGHTS BY SETTLING RESPONDENTS**

76. The covenants not to sue set forth in Section XXI above do not pertain to any matters other than those expressly identified therein. Settling Respondents expressly reserve, jointly and severally, and this Settlement Agreement is without prejudice to, all rights, claims and causes of action with respect to all other matters including, but not limited to:

a. claims brought by Settling Respondents pursuant to an agreement(s) among Settling Respondents and relating to the allocation and payment of costs of all "matters addressed" in the Settlement Agreement as that term is defined in Paragraph 83, or required to satisfy other obligations hereunder.

b. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute and for which the waiver of sovereign immunity is found in a statute for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans, reports, other deliverables or activities.

77. Subject to the United States' sovereign immunity and any other defenses it may have, this Settlement Agreement shall not have any effect on and Settling Respondents expressly reserve any claims or causes of action that Settling Respondents may have pursuant to Section 113 of CERCLA or other state or federal claims against the United States or any of its agencies

or departments based upon its (or their) status as a liable or potentially liable party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) relating to the Work, Future Response Costs, or this Settlement Agreement. This paragraph shall not be construed as a waiver of sovereign immunity nor shall it be construed as an acknowledgment or concession by the United States that Settling Respondents have any claim under state or federal law other than a claim under Section 113 of CERCLA.

78. Notwithstanding anything in this Settlement Agreement to the contrary, including the contribution protection provided in Paragraph 83, each Settling Respondent expressly reserves any right it may have to seek recovery pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, or any other provision of federal or state law including the Texas Solid Waste Disposal Act, from any person not a party to this Settlement Agreement. This paragraph shall not be construed as a waiver of sovereign immunity nor shall it be construed as an acknowledgment or concession by the United States that Settling Respondents have any claim under state or federal law other than a claim under Section 113 of CERCLA.

### **XXIII. OTHER CLAIMS**

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

80. Except as expressly provided in Section XIX (Covenant Not to Sue or Take Administrative Action by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Settling Respondents 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.

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

82. Settling Respondents have the right to challenge through the Dispute Resolution Procedure in Section XVI herein, any EPA cost or action which Settling Respondents allege is inconsistent with CERCLA or the NPC.

### **XXIV. CONTRIBUTION PROTECTION**

83. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Respondent has, as of the Effective Date, resolved its liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that subject to Settling Respondents' Reservation of Rights in Paragraphs 76 through 77, 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 the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, and Future Response Costs.

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

c. The contribution protection provided by this Section XXIV (Contribution Protection) does not preclude (1) EPA from enforcing the terms of this Settlement Agreement, subject to Paragraph 68, against any Settling Respondent that does not perform the obligations under this Settlement Agreement; (2) an action by any of the Settling Respondents under breach of contract or any other common law remedy, against any Settling Respondent that does not perform the obligations under this Settlement Agreement and pay its share of the costs of such obligations in accordance with the agreement(s) among the Settling Respondents and (3) an action by any of the Settling Respondents to pursue any right Settling Respondents may have under Section 113 of CERCLA, 42 U.S.C. § 9613, or any other provision of federal or state law including the Texas Solid Waste Disposal Act, against any person not a party to this Settlement Agreement. This paragraph shall not be construed as a waiver of sovereign immunity nor shall it be construed as an acknowledgment or concession by the United States that Settling Respondents have any claim under state or federal law other than a claim under Section 113 of CERCLA.

## XXV. INDEMNIFICATION

84. Settling Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Settling Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Settling Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorney fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Settling Respondents nor any such contractor shall be considered an agent of the United States.

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

86. Settling Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Respondents and any person for performance of Work on or relating to the Site. In



addition, Settling Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Respondents and any person for performance of Work on or relating to the Site.

## XXVI. INSURANCE

87. At least seven (7) days prior to commencing any on-Site Work, Settling Respondents or their contractors or primary subcontractors that are actually conducting the on-Site Work shall secure, and shall maintain for the duration of their on-Site Work, comprehensive general liability insurance of \$1,000,000 per occurrence (\$2,000,000 aggregate) and automobile insurance with limits of \$1,000,000, combined single limit, naming EPA as an additional insured. Within the same period, Settling Respondents shall provide EPA with certificates of such insurance. Upon EPA's request, Settling Respondents shall submit such certificates of insurance for each such contractor or primary subcontractor each year on the anniversary of the Effective Date if the same contractor or primary subcontractor is still conducting on-Site Work. In addition, for the duration of the on-Site Work, Settling Respondents shall ensure that their contractors or primary subcontractors who are actually the on-Site Work satisfy all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the on-Site Work on behalf of Settling Respondents in furtherance of this Settlement Agreement. If Settling Respondents demonstrate by evidence satisfactory to EPA that any contractor or primary subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Settling Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or primary subcontractor.

## XXVII. FINANCIAL ASSURANCE

88. At least fifteen (15) days prior to commencing any on-site Work, Settling Respondents, collectively and not individually, shall demonstrate that one or more of the Settling Respondents possess sufficient assets in the amount of \$2,000,000. Settling Respondents may reduce the amount of financial assurance demonstrated to complete the Work as the Work is performed and approved by EPA. Settling Respondents may make the demonstration in one or more of the following forms:

- a. a surety bond unconditionally guaranteeing payment and/or performance to complete the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the estimated cost to complete the removal action;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance to complete the removal action;

e. a corporate guarantee to complete the Work provided by one or more parent corporations or subsidiaries of Settling Respondents, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Respondents; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f);

f. a corporate guarantee to complete the Work by one or more of Settling Respondents, including a demonstration that any such Settling Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f); or

g. a demonstration based upon publically available financial information (such as a form 10k) that one or more of the Settling Respondents have sufficient assets to complete the removal action based upon Settling Respondents' estimated costs to complete the removal action.

89. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Settling Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 88, above. In addition, if at any time EPA notifies Settling Respondents that the anticipated cost of completing the Work has increased beyond the Settling Respondents' estimated costs, then, within 30 days of such notification, Settling Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Settling Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

90. If Settling Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 88.e. or 88.f. of this Settlement Agreement, Settling Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," Settling Respondents' estimated costs to complete the removal action at the Site shall be used in relevant financial test calculations.

91. If, after the Effective Date, Settling Respondents can show that the estimated cost to complete the removal action has diminished, Settling Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the Work to be performed. Settling Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Settling Respondents may seek dispute resolution

pursuant to Section XVI (Dispute Resolution). Settling Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

92. Settling Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute, based on Settling Respondents' estimated cost of the Work to be performed.

93. Settling Respondents' obligation to demonstrate financial assurance under this Settlement Agreement shall terminate upon EPA's issuance of the written notice of the completion pursuant to Section XXX (Notice of Completion of Work).

### **XXVIII. SUBSEQUENT MODIFICATION**

94. The OSC may make modifications to any plan or schedule in writing or by oral direction. Oral modification shall be memorialized promptly. Any oral modification will be effective when memorialized in writing by EPA promptly, but, in the case of exigent circumstances, it shall be effective on the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified by mutual agreement of EPA and Settling Respondents. Amendments shall be in writing and shall be effective when signed by EPA. OSCs do not have the authority to sign amendments to the Settlement Agreement.

95. If Settling Respondents seek permission to deviate from any approved work plan or schedule, Settling Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Settling Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 94. Any agreed modification of the Work will modify the deadlines in the Work accordingly and thus, no stipulated penalties may be assessed according to the existing deadlines.

96. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Settling Respondents shall relieve Settling Respondents of their 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.

### **XXIX. ADDITIONAL REMOVAL ACTIONS**

97. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment pursuant to the Work, EPA will notify Settling Respondents of that determination. Unless otherwise stated by EPA, within 60 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment pursuant to the Work, Settling Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. Upon EPA's approval of the plan, Settling Respondents shall implement the plan for additional removal

actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVIII (Modifications).

### **XXX. NOTICE OF COMPLETION OF WORK**

98. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to, payment of Future Response Costs and record retention, EPA will provide written notice to Settling Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Settling Respondents, provide a list of the deficiencies, and require that Settling Respondents modify the Work Plan(s) if appropriate in order to correct such deficiencies. Settling Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Settling Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

### **XXXI. INTEGRATION/APPENDICES**

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

"Appendix A" is the list of Settling Respondents (subject to change pursuant to Paragraph I.4.).

Appendix B" is the map of the Site.

"Appendix C" is a copy of the order appointing the Receiver.

"Appendix D" is the Aboveground Storage Tank Sludge Removal Action Work Plan

"Appendix E" is the Former Process Equipment Residual Waste Removal Action Work Plan

### **XXXII. NOTICE OF SETTLEMENT AGREEMENT**

100. This Agreement will be published as notice on EPA's website within 60 days of its Effective Date.

### **XXXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

101. This Settlement Agreement shall be effective on the day it is signed by the Superfund Division Director

102. The undersigned representative(s) of Settling Respondents whose names are signed and embodied in the Settling Respondent Signature Page certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party(ies) it (they) represent(s) to this document.

SETTLING RESPONDENT SIGNATURE PAGE

USOR SITE – TIME CRITICAL REMOVAL ACTION AOC

For Settling Respondent \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

RECEIVER SIGNATURE PAGE

USOR SITE – TIME CRITICAL REMOVAL ACTION AOC

Agreed this 12<sup>th</sup> day of July, 2016.

For Receiver \_\_\_\_\_

By: Eva Engelhart

Title: Receiver for U.S. Oil Recovery, L.P. f/k/a U.S.  
Oil Recovery LLC, MCC Recycling LLP f/k/a US  
Oil Recovery #2, LLP, U.S. Oil Recovery L.L.P.  
(Texas Secretary of State Registration No.  
800159885), U.S. Oil Recovery L.L.P. (Texas  
Secretary of State Registration No. 800458414)

It is so ORDERED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

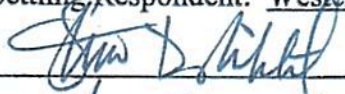
Director, Superfund Division  
Region 6  
U.S. Environmental Protection Agency



SETTLING RESPONDENT SIGNATURE PAGE

USOR SITE – TIME CRITICAL REMOVAL ACTION AOC

For Settling Respondent: Western Waste of Texas, LLC.

By: 

Title: Area Director

APPENDIX A –SETTLING RESPONDENTS  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
U.S. OIL RECOVERY SITE – AREA OF INVESTIGATION-1  
PASADENA, TX

Aerojet, Inc.  
Air Products and Chemicals, Inc.  
Air Products LLC, as successor in interest to Air Products, L.P.  
Akzo Nobel Functional Chemicals LLC, as successor to Akzo Nobel Polymer Chemicals LLC  
Allied Petrochemical, LLC  
American Acryl L.P.  
American Spring Wire Corporation  
American Valve & Hydrant Mfg. Company  
Andrews Transport, L.P.  
Ashland Inc.  
Baker Petrolite LLC  
Baker Hughes Oilfield Operations, Inc.; and on behalf of Valkyrie Commission Services  
BASF Corporation  
Blentech Corporation  
BNSF Railway Company  
BP Products North America Inc.  
BP Amoco Chemical Company, for and on behalf of BP Solvay Polyethylene  
CenterPoint Energy Houston Electric, LLC  
Channel Shipyard Inc.  
Clean Harbors San Leon, Inc. f/k/a/ DuraTherm, Inc.  
Clearwater International, L.L.C.  
Crown, Cork & Seal Inc.  
Dana Container, Inc.  
DCP Midstream, LP, on behalf of DCP Southeast Texas Plants LLC f/k/a Raywood Gas Plant, LLC  
Domco Products Texas Inc.  
The Dow Chemical Company  
Ecolab Inc.  
Effective Environmental, Inc.  
Enable Pipeline Services, LLC (formerly CenterPoint Energy Pipeline Services LLC)  
Ensource Corporation

Enterprise Products Operating LLC on behalf of Enterprise Products Operating, LLC,  
Enterprise Refined Products Company, LLC, Enterprise TE Products Pipeline Company,  
LLC, fka TEPPCO, and Enterprise Transportation Company

Ethyl Corporation

Evonik Oil Additives USA, Inc. (f/k/a Evonik RohMax USA, Inc.)

Explorer Pipeline Company

FMC Technologies, Inc.

Fort Bend Regional Landfill, L.P.

Garner Environmental Services, Inc.

GATX Corporation

General Dynamics - Ordnance and Tactical Systems, Inc.

General Electric Company

Groendyke Transport, Inc.

Hexion Inc. f/k/a Momentive Specialty Chemicals Inc.

Houston Pipe Line Company, LP

Hydrocarbon Resource Recovery, L.L.C.

INEOS Polyethylene NA

INEOS Styrolution America LLC

Innovene Polymers Inc.

Innovene Polyethylene N.A.

InkJet, Inc.

Keith, Inc.

Kern-Liebers Texas, Inc.

KMCO, LLP

KMTEX, LTD.

LBC Houston, L.P.

Leedo Manufacturing Co. L.P.

Lighthouse Environmental Services, Inc.

Lone Star NGL Mont Belvieu LP

Louisiana-Pacific Corporation

The Lubrizol Corporation

Magellan Terminals Holdings, L.P.

Marathon Petroleum Company LP

Miller Transporters, Inc.  
Mitsubishi Caterpillar Forklift America Inc.  
National Oilwell Varco LP on behalf of National Oilwell Varco, L.P., Andersgauge USA Inc., Grant Prideco LP, Turboscope, Varco Shaffer, T-3 Energy, Pipeline Valve Specialty, R&M Energy Systems, NOV and Robbins & Myers Energy Systems LP.  
Norson Services LLC  
ONEOK Hydrocarbon Southwest, L.L.C.  
O'Rourke Dist. Co., Inc.  
Pilot Industries of Texas  
PLT3 Liabilities Holdings, L.P. f/k/a Oxid, L.P.  
Powell Industries, Inc.  
Powell Electrical Systems, Inc. successor to Powell Electrical Manufacturing Company  
Quala Systems, Inc., for itself and as the indemnitor for Qualawash Holdersin, LLC  
Safety Kleen Systems, Inc.  
Schlumberger Technology Corporation  
Schneider National Bulk Carriers, Inc.  
South Coast Terminals LP  
Southwest Shipyard, L.P.  
Stolt-Nielsen USA Inc.  
Sun Coast Resources, Inc.  
The Sun Products Corporation  
Superior Packaging & Distribution, L.P.  
Targa Downstream LLC  
Targa Midstream Services LLC (f/k/a Dynegy Midstream Services, L.P.)  
Texas Barge & Boat, Inc.  
Texas Oil and Gathering, Inc.  
Texas Tile Manufacturing LLC  
Texas United Pipe, Inc.  
Texmark Chemicals, Inc.  
Total Petrochemicals & Refining USA, Inc., on behalf of Cray Valley U.S.A., LLC  
TPC Group, LLC (f/k/a Texas Petrochemicals Corporation)  
Trimac Transportation Inc. f/k/a Trimac Transportation South Inc.

TT Barge Services Mile 237, LLC

TT Barge Cleaning Mile 183, Inc.

United Airlines, Inc.

United States Steel Corporation and its subsidiaries, U.S. Steel Tubular Products, Inc. and U.S. Steel Oilwell Services, LLC, on behalf of Delta Tubular Processing and Delta Tubular International

Valero Marketing and Supply Company

Valero Refining Company – Texas, L.P.

Valero-Terminaling & Distribution Company

Vopak Logistics Services USA, Inc. on its own behalf and on behalf of Vopak Terminal Galena Park, Inc.

Walbar, Inc.

Waste Management of Texas, Inc., on behalf of itself, USA Waste of Texas Landfill, Inc., Cougar Landfill, Inc. and S&J Landfill Limited Partnership

Weatherford U.S., L.P., as predecessor in interest of P Chem, Inc.

West Texas Drum Company

Western Waste of Texas, LLC

APPENDIX B  
SITE MAP REMOVAL ACTION

Location of Former Bioreactor

ASTs

Warehouse

Lab

Containment Pond

Main Office

Machine Shop

Guard Shack

Vince Bayou

N. Richey Street





APPENDIX C RECEIVER ORDER  
REMOVAL ACTION  
U.S. OIL RECOVERY SITE – 400 NORTH RICHEY AREA  
PASADENA, TX

P-14  
APREX  
171X

NO. 2009-32636

HARRIS COUNTY, TEXAS  
Plaintiff,

and

THE STATE OF TEXAS  
Acting by and through the Texas  
Commission on Environmental Quality,  
A Necessary and Indispensable Party  
Party-Plaintiff,

vs.

KLAUS GENSSLER, individually, and d/b/a §  
U.S. OIL RECOVERY, L.P., §  
MCC RECYCLING, LLP, §  
GENSSLER ENVIRONMENTAL §  
HOLDINGS, L.L.C., U.S. OIL RECOVERY, §  
LLP, a/k/a U.S. OIL RECOVERY, L.L.P. §  
Defendants §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

**FILED**

Loren Jackson  
District Clerk

JUL -7 2010

Time \_\_\_\_\_  
By \_\_\_\_\_  
Harris County, Texas  
Clerk

125<sup>TH</sup> JUDICIAL DISTRICT

**ORDER FOR APPOINTMENT OF RECEIVER AND MASTER**

Be it remembered, that on June 2, 2010, plaintiff, Harris County, Texas, in the above-captioned and numbered cause, presented to the Court its Application for Appointment of a Receiver and Master. Counsel for Harris County, the State of Texas, and the defendants were all present and, this Court, after reading the Application for Appointment of Receiver and Master and the attachments, hearing testimony on the current conditions of the properties at 200 and 400 North Richey Road in Pasadena, Texas, taking judicial notice of all the pleadings and testimony and evidence offered by the Court in this and previous hearings in this case, as well as the arguments of counsel, GRANTS the Application and finds that:

1. Defendants Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., are violating environmental laws

and putting the health and safety of residents of Harris County at risk by storing hazardous and flammable waste in conditions that have created an imminent fire and flood hazard at their facilities at 200 and 400 North Richey Road in Pasadena, Texas;

2. Defendants Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., have violated this Court's temporary injunction order signed on March 11, 2010, by failing to remove the hazardous and flammable waste and all industrial waste and wastewater from their properties at 200 and 400 North Richey Road;
3. Defendants Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., have failed to appear for two depositions ordered by this Court and have refused to accept service to appear in court upon court order to show cause in response to plaintiff's Motions for Contempt;
4. Defendant Klaus Genssler's current whereabouts are unknown and he effectively has abandoned the facilities at 200 and 400 North Richey Road in Pasadena, Texas;
5. Defendant Klaus Genssler has indicated in his reports to Harris County and the State of Texas that he and his companies have no money to clean up the properties pursuant to the terms of the Temporary Injunction, but is not in bankruptcy;

6. Defendant Klaus Genssler, individually, has previously been found to be causing suffering, allowing or permitting pollution to take place at 200 and 400 North Richey Road;
7. Defendant Klaus Genssler, individually, has taken in approximately \$10,000,000.00 per year from the defendant businesses for the past 3-4 years, and has not reinvested this money into these companies. As a result, the physical plants at defendants' 200 and 400 North Richey Road facilities have fallen into disrepair to such a degree that they now pose a serious threat to the safety of the residents and the environment in Harris County, Texas;
8. Defendants Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., since the receivership was filed, have caused or have allowed or permitted others to remove valuable industrial equipment from their possession from 200 North Richey Road and 400 North Richey Road in Pasadena, Texas to places unknown;
9. A receivership is necessary because there is no other adequate remedy at law as defendants have failed to comply with two temporary injunctions, and have failed to appear in court when ordered to do so. In addition, there is an imminent threat to the residents of Harris County because defendants' facilities have limited fire protection and are illegally storing hazardous and other industrial waste, as well as flammable waste, on property that is partially in the floodplain and floodway;
10. If any portion of the Receiver's compensation under this order exceeds the defendants' assets which are under receivership, Harris County agrees to

compensate the Receiver up to ten thousand dollars (\$10,000) for these services under this order. These funds are already authorized by Harris County Commissioners Court. Any additional amount this Court determines Harris County is to pay the Receiver is subject to approval by Commissioners Court. The Receiver will be compensated at three hundred fifty dollars (\$350) per hour, subject to approval by Commissioners Court. Harris County is ordered to place ten thousand dollars (\$10,000) in the Court's registry as a deposit against the Receiver's fees.

11. Special circumstances exist that justify the appointment of a Special Master, including the defendants' failure to appear for hearings or provide documentation. Counsel advised that Mr. Genssler cannot be located, but is reported to be out of state, in Alabama or in Germany, and to have various business deals underway involving companies with which he is involved, but, he will not disclose his interests in those businesses. The Court cannot travel the state, or to Alabama or Germany, to discover the defendants' relationships with each other and third parties, or where assets are located, but a Master can do so, and then report to the Court. Attempts to discover such information have been futile since Mr. Genssler refuses to appear and has retained multiple lawyers to protest every effort to obtain information. The Master's duties are limited to discovering the defendants' whereabouts, assets, and records, including their relationships with each other and third parties, and potential sources of income.

This Court takes into consideration the following documents: the plaintiff's Ninth Amended Petition; the March 11, 2010 Temporary Injunction, hearing evidence, and testimony;

and the June 8, 2008 Temporary Injunction, hearing evidence, and testimony; the Show Cause Order signed by this Court; the three Temporary Restraining Orders, all the evidence, testimony, and sworn pleadings in this case.

This Court, based on the overwhelming evidence presented in this case and pursuant to Chapter 64 of the Texas Civil Practice and Remedies Code, appoints ~~Risako Baumann~~ <sup>Rick Townsend</sup> as Receiver in this case, Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., and ORDERS:

(713) 416-1766

(K)

(1) Defendants, Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., place all documents and property subject to this order in the custody and control of the Receiver, within five days of the execution of this order;

(2) That the defendants Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., are enjoined from further entry onto the properties at 200 North Richey Road and 400 North Richey Road, without further order of this Court. The Receiver has full access to both 200 and 400 North Richey Road, and has full authority to grant others access to those properties;

(3) That all real or personal property possessory claims or any interest in real property, easements, and rights used by the defendants Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., at their facilities at 200 and 400 North Richey

Road sites, including all trucks, processors, tanks, and other equipment, whether held by the defendants, their assigns, or contractors, is placed under custody and control of the Receiver;

(4) That all non-exempt real and personal property of Klaus Genssler within the jurisdiction of this Court are placed under the custody and control of the Receiver;

(5) That defendants, Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., are enjoined from encumbering or transferring property to anyone but the Receiver, and that the defendants are enjoined from concealing property at the 200 and 400 North Richey Road sites including all trucks, processors, tanks, and other equipment, including through the use of third parties, companies, agents, attorneys, pseudonyms, or assumed names;

(6) That the Receiver may retain counsel, as needed, as well as realtors and all other sales agents needed to sell property and rights. ~~The retention of the firm of Miller, Seamardi, and Carrabba P.C. at three hundred twenty-five dollars (\$325) per hour, is approved;~~ ka

(7) The Receiver is authorized to hire all persons and entities necessary to assess the qualities of the items owned or possessed by defendants, and to sell or move them, as needed;

(8) That the Receiver is authorized to use any means allowed under the statute to bring the defendants' facilities at 200 North Richey Road and 400 North Richey Road in Pasadena, Texas permanently into compliance with environmental laws, including: a) seizing all assets in possession or control of defendants, Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP a/k/a U.S. Oil Recovery, L.L.P., including any entities controlled or managed by Klaus Genssler, or monies received for the benefit of Klaus Genssler; and, b) using the assets obtained to pay the Receiver's fees, and to hire an environmental remediation company to:

- 1) test and classify the waste in the drums and totes in the warehouse at 400 North Richey Road and determine where to properly dispose of the waste, to remove all leaking drums and totes and other containers and all hazardous waste contained in drums, totes and other containers as soon as possible to a Texas Commission on Environmental Quality approved facility, and take all other action necessary to secure these containers in such a manner as to protect the public;
  - 2) test and classify the waste in the roll-off containers at 400 North Richey Road and determine where to properly dispose of the waste, and dispose of it at a Texas Commission on Environmental Quality approved facility;
  - 3) test and classify the waste in the bioreactors at 400 North Richey Road and identify where to properly dispose of the waste, and dispose of the waste at a Texas Commission on Environmental Quality approved facility;
  - 4) test and classify the waste that is presently held in vessels, pipes, and containers at 200 North Richey Road, and determine where to properly dispose of the waste, and then dispose of the waste at a Texas Commission on Environmental Quality approved facility; and
  - 5) test and classify the waste in the tanks in the tank farm at 400 North Richey Road, and determine where to properly dispose of the waste, and then dispose of the contents at a Texas Commission on Environmental Quality approved facility.
- (9) The Receiver may schedule hearings and meetings and direct parties and witnesses to give testimony at such hearings and meetings and to rule upon the admissibility of evidence at such hearings. He may place witnesses under oath;
- (10) The Receiver's agents share his powers and immunity;



- (11) An order from the Receiver, made pursuant to this order, is a court order;
- (12) Every security officer, constable, deputy constable, sheriff, deputy sheriff, and every other peace officer with notice of this order is authorized to accompany the Receiver to any location designated by the Receiver where Receiver believes assets or documents of a defendant may be located, without the necessity of a writ of execution having been issued, and is ordered to prevent any person from interfering with the Receiver (or any person under the direction of the Receiver) from carrying out any duty under this order or interfering with any property in control of the Receiver, or any property subject to this order;
- (13) The clerk is ordered to issue all appropriate writs;
- (14) The Receiver is required to post a one hundred dollar (\$100) bond. Harris County is required to post a one hundred dollar (\$100) bond.
- (15) No interference. Every person with notice of this order is ordered to assist the Receiver and not to interfere with any property in the Receiver's control or subject to this order, and is ordered to assist and not to interfere with the Receiver in the carrying out of his duties;
- (16) All third parties are ordered to immediately notify the Receiver if they discover the existence of property, or of facts which might lead to the discovery of property in which any defendant has any interest;
- (17) Notice to third parties. The Receiver, to the exclusion of every defendant, is the only party entitled to possess, sell, liquidate, and otherwise deal with every defendants' non-exempt property. Once third parties receive notice of this order, they may be subject to liability if they release property to any defendant, without the Receiver's prior written consent;
- (18) The Receiver is authorized to re-direct and read the defendants' mail;

(19) Changes in addresses and contact information. Every defendant is ordered to immediately notify the Receiver, in writing, of all present addresses (home, work, deer lease, fishing camp, etc.), telephone numbers (at every address), cell phone numbers, pagers, fax numbers), e-mail addresses, and to immediately notify the Receiver, in writing, of all changes in the information;

(20) Duties if anyone resists the Receiver's orders, based on the advice of third parties. Any witness or person resisting an order or request of the Receiver, based on legal or other advice, is ordered to give the full name, address, fax number, e-mail address, cell phone number, and direct telephone number for each person giving that advice and to instruct each person to immediately contact the Receiver;

(21) No defendant may spend non-exempt funds without the Receiver's prior written permission;

(22) The Receiver has no duty to maintain, guard, or ensure property taken into *custodia legis*, or to maintain or pay any lease, nor shall Receiver be required to pay any mortgage, lien or assessment, defend against any lawsuit, pay any tax or fee, maintain any insurance coverage or have any obligation except as specifically ordered;

(23) The Receiver may certify copies;

(24) The Receiver may require answers to questions, or additional turnover and production, in shorter time periods than set by the Texas Rules of Civil Procedure;

(25) The Receiver may collect all unclaimed funds;

(26) The Receiver may collect, sell, or assign the defendants' rights to all air miles and rewards programs;

(27) The Receiver may require tax assessors and the Texas Department of Transportation to freeze titles, or re-title vehicles in the Receiver's name, as Receiver;

(28) All third parties who hold the property of the defendants, Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P., are ordered to immediately notify the Receiver, and to deliver the property within five working days of demand from the Receiver;

(29) Notice to third parties. The Receiver, to the exclusion of every defendant, is the only party entitled to possess, sell, liquidate, and otherwise deal with every defendants' non-exempt property. Once third parties receive notice of this order, they may be subject to liability if they release property to any defendant, without the Receiver's prior written consent; .

(30) Receiver may order providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including Time Warner, AT&T, Verizon, Sprint, Satellite TV, Direct TV, Google, Yahoo, and internet blogs and chat rooms) and financial institutions compelling the turnover of any information that the Receiver believes might prove or lead to the discovery of the existence and location of a defendant's whereabouts or assets, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. Such orders shall be directed to the entity from which the information is sought and describe, as specifically as possible, the precise information requested with the dates for which the information is required, which shall not be more than one year before the issuance of the Receiver's request, unless specifically stated in the request or attached letters;

(31) This Order specifically serves as the court order required by 47 USC § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer. The disclosure of information pursuant to this Order is not a violation of PUC Substantive Rule 25.272. This Order satisfies the law, regulation, or legal process exception to the Proprietary Customer Information Safeguards found in PUC Substantive Rule 25.272 (g)(1).

(32) The Receiver may order any Consumer Reporting Agency, as defined by the Fair Credit Reporting Act ("FCRA") section 15 USC § 1681b(f), to provide consumer reports on defendants, as allowed under FCRA §1681b(a)(1);

(33) The Receiver may order providers of global positioning satellite (GPS) and tracking information, to provide information that might assist the Receiver in locating a defendant or defendant's assets.

(34) The Receiver has full power and authority to take possession of all non-exempt property of Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C. and U.S. Oil Recovery, LLP, a/k/a U.S. Oil Recovery, L.L.P. that is in any other defendant's actual or constructive possession or control;

(35) Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C., and U.S. Oil Recovery, LLP a/k/a U.S. Oil Recovery, L.L.P. are ordered to deliver to the Receiver all non-exempt cash, interest on deposits, and stock dividends, within five days of notice of their existence;

(36) This order is limited to non-exempt assets, even if it seems to state otherwise. Any defendant claiming any exemption is ordered to notify the Receiver of the exemption, immediately. The Receiver shall assume that property is not exempt, until the person claiming

the exemption states the exemption claimed, the legal and factual grounds for the exemption, and describes the property with enough specificity that a constable can levy, based on the description.

(37) Duties to disclose and supplement. Klaus Genssler, individually, and d/b/a U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., Genssler Environmental Holdings, L.L.C. and U.S. Oil Recovery, LLP a/k/a U.S. Oil Recovery, L.L.P. are ordered to fully disclose to the Receiver all of defendant's assets and to neither directly nor indirectly interfere or impede the Receiver in the performance of his duties under this Order. Exempt and non-exempt assets must be disclosed, so that the exempt status of the property can be determined. Every defendant is ordered to supplement all disclosures, in writing, within five days of knowledge of information required disclosed by this Order.

(38) The attached list is illustrative, and the Receiver's powers are to be liberally construed, including:

(i) Production and turnover. Ordering, from all defendants and third parties, the turnover of assets, evidence and documents upon all matters he feels pertain to compliance with this Order, including every defendant's assets, unopened mail, the location of assets, values of assets and all other financial matters pertaining to any defendant, including the amount of money that any defendant may need on a periodic basis to continue the defendant's business or to provide for the necessities of life;

(ii) Examinations and testimony. Scheduling hearings and meetings and directing parties and witnesses to give testimony at such hearings and meetings and to rule upon the admissibility of evidence at such hearings;

(iii) Administering oaths. Placing witnesses under oath and examining them himself, or through his agents;

(iv) Compliance. Seeking compliance with this order by every defendant by filing a motion for contempt and serving the person accused of contempt with notice to appear before this Court and show cause why that person should not be sanctioned for contempt;

(39) Disputes. If there be any dispute whether an asset is non-exempt property of a defendant, the Receiver is authorized to take custody of the asset until the Court can determine the rights of those claiming interests in the asset;

(40) Access to assets. The Receiver is authorized to take all action necessary to gain access to real property, leased premises, storage facilities, mail, and safety deposit boxes, in which real or personal property of any defendant may be situated, whether owned by a defendant or not.

(41) This Court, based on the overwhelming evidence presented in this case, appoints Sheeran Smith as Master in this case under Rule 171, Texas Rules of Civil Procedure. The




Court notes these special circumstances, among others:

- a. This case revolves around toxic waste, including toxic spills that are prompted or exacerbated by bad weather. A Master can immediately photograph and make the Court aware of the situation, whereas holding even an emergency hearing requires hours to draft and file pleadings, then notify all parties;
- b. The Master can independently chronicle spills and illegal entry, whereas a sitting Court cannot drop what it is doing to drive to the site and inspect;
- c. The Master can travel, including to Alabama and other locations, to interview and examine those who are, or might be, doing business with defendants; and

d. The Master can conduct "on the spot" examinations/interviews of transient witnesses, like truck drivers who are removing defendants' property or waste. A driver who lives out of state, or more than 150 miles away would be out of the Court's jurisdiction before a party could draft and serve a subpoena to appear for deposition – days later – taking the property, truck, or waste with him. Many of these witnesses would have knowledge of only small parts of the puzzle, and a quick Master's interview would suffice to obtain all that the witness knows. This testimony would be lost without the intercession of a Master.

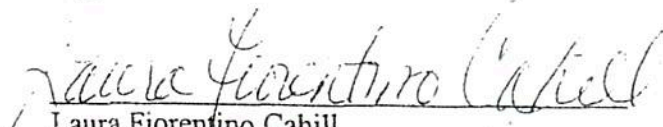
(42) The Master's duties are limited to determining the ownership of assets, the interrelationships of the various entities, and the causes of any toxic situations at 200 or 400 North Richey Road, Pasadena, Texas.

Taxation of costs awaits the entry of the final order in this case.

SIGNED ON July <sup>19</sup> 7, 2010. 

  
\_\_\_\_\_  
THE HONORABLE KYLE CARTER

Approved:

  
\_\_\_\_\_  
Laura Fiorentino Cahill  
Deputy Division Chief, Environmental Division  
Harris County Attorney Vince Ryan's Office



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this July 19, 2010

Certified Document Number: 45846746 Total Pages: 14

LOREN JACKSON, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**



P-2  
APPENDIX

Safety-Kleen Systems, Inc., Oxid, L.P.,  
Southwest Shipyard, L.P., Enterprise  
Products Operating, LLC, Enterprise  
Transportation Company, Vopak  
Terminal Galena Park, Groendyke  
Transport, Inc., T.T. Barge Cleaning,  
Inc.

Plaintiffs,

v.

U.S. OIL RECOVERY, L.P., KLAUS  
GENSSLER, MCC RECYCLING,  
L.L.P., U.S. OIL RECOVERY, L.L.P.,  
SCALTECH INTERNATIONAL LLC  
AND MCC GROUP, N.V.

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125<sup>TH</sup> JUDICIAL DISTRICT COURT

**FILED**

Chris Daniel  
District Clerk

MAY 22 2012

Time: \_\_\_\_\_  
By: \_\_\_\_\_  
Harris County, Texas  
County

Order Appointing Successor Receiver

On the \_\_\_ day of \_\_\_\_\_ came on to be considered Intervenor's' (now plaintiffs') Motion to Substitute Receiver. The Court having considered the motion finds it should be granted. It is accordingly:

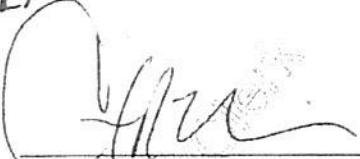
ORDERED that:

Rick Townsend was relieved of his duties as Receiver effective as of March 19, 2012. The Receivership Order is hereby reinstated in this severed case and ~~Mike D. Harper III~~ <sup>Eva Engelhart</sup> is hereby appointed as the successor Receiver. Other terms of the Receivership Order remain in place except that: (1) the receivership will no longer be over Klaus Genssler, individually, or Genssler Environmental Holdings, L.L.C., which is in bankruptcy, and (2) Intervenor's will be responsible for the successor Receiver's fees and expenses going forward to the extent those fees and expenses cannot be paid by using assets of the Receivership estate and plaintiff's bond shall be released and Intervenor's shall post a bond equal to the bond presently posed by Harris County and the State of Texas in the amount of \$100.

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
At the time of imaging

The purpose of the Receivership is to assist the plaintiffs in connection with the cost effective remediation of the sites in accord with plaintiffs' obligations under the currently existing AOC or subsequent orders of the EPA.

Signed this 22 day of May, 2012.

  
\_\_\_\_\_  
Judge Presiding

U.S. District Court for the District of Columbia

APPENDIX D  
ABOVE GROUND STORAGE TANK SLUDGE  
REMOVAL ACTION WORK PLAN

**APPENDIX D**  
**ABOVEGROUND STORAGE TANK SLUDGE REMOVAL ACTION WORK PLAN**

**US OIL RECOVERY SUPERFUND SITE**  
**400 NORTH RICHEY AREA**  
**PASADENA, HARRIS COUNTY, TEXAS**

**Introduction**

This Work Plan describes activities that will be carried out by Respondents as they implement a time-critical Removal Action to address solids within aboveground storage tanks (ASTs) at the US Oil Recovery Superfund Site (Site). The Site has a tank farm area containing 32 Above Ground Storage Tanks (ASTs) and six sumps just north of the warehouse and process areas (Figure 1). The removal of liquids and sampling of the sludge from all the ASTs and sumps was completed in accordance with a prior EPA-approved Work Plan submitted pursuant to a separate Administrative Settlement Agreement and Order on Consent for Removal Action dated August 25, 2011. Thirty (30) of the ASTs and three sumps contain sludge (Table 1). This Work Plan provides a scope of work for the removal and proper disposal of approximately 113 cubic yards (CY) of non-hazardous sludge wastes contained within seven of the ASTs and two sumps and approximately 1,067 CY of hazardous sludge wastes contained within 23 ASTs and one sump. Sludge levels were measured and sludge in each individual AST and sump were sampled by Effective Environmental, Inc. (E<sup>2</sup>) in accordance with a prior EPA-approved Quality Assurance Sampling Plan (QASP) addendum. The AST sludges were classified as hazardous and non-hazardous waste based on the analytical results obtained from the sampling events (Table 2).

This Work Plan describes the approach and procedures for removal of sludge wastes contained in the 30 ASTs and three sumps specified herein, the demolition of the ASTs and associated ancillary equipment (pumps, piping, etc.) and the pressure washing of tank farm areas (containment systems, sumps, etc.) (Figure 1). Upon completion of this removal action, the tank farm areas will be free of all tanks and equipment, the containment will have been pressure washed, and the containment walls will have been breached such that future rain water will drain from the area.

**Removal Action Responsibilities**

The waste removal activities as well as the tanks/equipment pressure washing and demolition described herein will be performed by Clean Harbors Environmental Services Inc. (CHES) with oversight on behalf of Respondents from EHS Support LLC (EHS) and Pastor, Behling & Wheeler, LLC (PBW). PBW will have personnel on-site full time who will be responsible for oversight of CHES, compliance with the Work Plan and Site Health and Safety Plan (HASP), tracking the removal of wastes, and documenting site activities. Although not contracted directly with CHES, PBW's on-site personnel will be acting as the Respondents' on-site representative and will have the Respondents' full authority to stop work and re-direct CHES compliance with approved Work Plan and HASP for this removal action. Deliverables and tracking documents will be provided to EPA by PBW through established Respondent communications and/or reporting methods.

**Health and Safety Plan**

CHES will operate under the overall Site Health and Safety Plan (HASP) dated May 2012 and prior to mobilization will prepare a HASP specific to this removal action. The HASP will ensure the protection of the public health and safety during performance of the removal action and will be submitted to EPA for review. Changes to the plan recommended by EPA will be incorporated into the final plan that will be

implemented during the pendency of the removal action. The HASP will describe appropriate personal protective equipment (PPE) for the anticipated hazards. All site workers shall receive the appropriate level of training according to 29 CFR 1910.120 that prepares them for their job functions and responsibilities.

At a minimum, the PPE should include Level D PPE protection (i.e., hardhat, safety glasses, steel toe shoes, earplugs, and long sleeve shirt/pants) and activities associated with waste handling and sampling will be performed using Level C PPE protection. Personnel handling the materials (liquids or sludges) in or in the vicinity of the tank farm or vacuum boxes SHALL have a functional personal hydrogen sulfide monitor on their person. Additional periodic air quality monitoring of the work area and continuous air monitoring of confined space entry areas will be performed using a 4-gas meter. PPE will be upgraded to OSHA Level B as needed based on readings from the 4-gas meters and hydrogen sulfide monitors.

### Removal Action Description

With the Respondents desire to remove all tank contents, tanks and ancillary equipment, and following a review of the analytical data provided in Table 2, it was determined that the most timely and effective plan for removal and disposal of AST wastes, removal of ASTs/equipment and pressure washing of the tank farm area would be via the following steps:

1. Remove liquids (rain water) from the containment areas.
2. Remove sludge waste materials from ASTs 1 through 30 and Sumps 44, 46 and 47, including:
  - o 113 cubic yards (estimated approximate volume) of non-hazardous material;
  - o 1,039 cubic yards (estimated approximate volume) of hazardous material with TCLP-benzene concentrations >0.5 mg/L and 28 cubic yards (estimated approximate volume) of hazardous material with a pH>12.5.
3. Remove, consolidate, sample, classify and dispose of residual sludge from the North Tank Farm (NTF) and South Tank Farm (STF) containments and Sumps 34, 35 and 36.
4. Wash AST interiors in preparation for demolition, complete demolition with metal materials sold for scrap.
5. Wash all ancillary equipment (e.g., piping, pumps, etc.) within the sumps and North Tank Farm (NTF) and South Tank Farm (STF) containments. Remove the pressure washed ancillary equipment and recycle.
6. Wash the sumps, truck bays, and NTF and STF containment areas such that future rainfall in these areas need not be contained but can be discharged directly to the ground surface.
7. Breach the containment areas and sump walls to minimize the potential for future rainfall accumulation in the above areas that are above grade.
8. Remove all used personal protective equipment (PPE) and other equipment, followed by CHES demobilization from the Site.

With regard to the first step in this process, the liquids in the NTF and STF will be sent to the Intergulf facility in Pasadena, Texas.

With regard to Step Two in this process:

- CHES will prepare and obtain approval of a waste profile for shipment of the non-hazardous sludge waste to: (1) the Seabreeze Environmental Landfill in Angleton, Texas; (2) the Waste Management Coastal Plains Landfill in Alvin, TX; and/or (3) the Waste Management Conroe Landfill in Conroe, TX. CHES will perform a bucket test of the non-hazardous waste (see detailed description below) for waste compatibility/reactivity prior to transferring the sludge to vacuum boxes.

- CHES will perform a bucket test of the hazardous waste (see detailed description below) for waste compatibility/reactivity, transfer the sludge to vacuum boxes and sample the vacuum boxes for disposal facility acceptance testing. Upon facility acceptance, the hazardous waste will be shipped to: (1) the Systech Environmental Corporation Facility in Fredonia, KS (to be blended into a hazardous waste derived fuel for energy recovery at another site); (2) the Clean Harbors Deer Park Incinerator in Deer Park, TX; and/or (3) the Clean Harbors LaPorte, TX site (with subsequent shipment under Clean Harbors manifest to the Clean Harbors Thermal Desorption Unit in Lambton, Ontario, Canada). Upon facility acceptance and confirmation of EPA approval of these disposal facilities, waste shipment will be performed as described below.

With regard to Step Three in this process CHES will pump free liquids to vacuum trucks and place solid materials in roll-off boxes. The vacuum trucks will be sent to the Intergulf facility and the roll-off boxes will be sent to one of the facilities identified for Step Two above.

With regard to Steps Four, Five and Six in this process, the wash liquids will be collected in vacuum trailers that will be sent to the Intergulf facility.

#### *Waste Removal and Disposal*

Following receipt of the aforementioned approvals:

1. Non-hazardous sludge contained in the seven ASTs and two sumps will be pumped into vacuum boxes for shipment to the Seabreeze, Coastal Plains and/or Conroe facilities. EPA will be notified if the waste profile is not approved by, or if individual shipments are not accepted by one of these facilities, in which case, approval of an alternative facility will be sought and obtained prior to use.
2. Hazardous sludge contained in the 23 ASTs and one sump will be pumped into vacuum boxes for shipment to the Systech Fredonia facility, the Clean Harbors Deer Park Incinerator and/or the Clean Harbors LaPorte site. EPA will be notified if the waste profile is not approved by, or if individual shipments are not accepted by one of these facilities, in which case, approval of an alternative facility will be sought and obtained prior to use.

#### Non-Hazardous Waste Removal and Disposal

The sludge within the following ASTs were deemed to be non-hazardous via the aforementioned sampling by E<sup>2</sup> and analysis by ALS Environmental (as summarized in Table 2):

- ASTs 3, 5 and 6
- ASTs 26 and 27
- ASTs 29 and 30
- Sumps 46 and 47

The non-hazardous sludge from these seven ASTs will be accessed from existing openings and 6" sample ports in the tops of the vessels, liquefied using an automated 3D nozzle and 10,000 pounds per square inch – gage (psig) high pressure water blaster, pumped to vacuum boxes with the sludge in Sumps 46 and 47 for shipment to the Seabreeze, Coastal Plains, and/or Conroe Landfills. Prior to combining materials from two or more ASTs into a vacuum box, a "bucket test" will be performed to check if undesirable reactions occur. For this test, CHES will add a small sample of sludge from each AST planned to be mixed in a vacuum box, in the order it is to be added to the vacuum box, into a metal pail. The bucket sample will be inspected for signs of reaction prior to materials represented by the samples being loaded

into the vacuum box. If the bucket test does not indicate any potential compatibility issues, the sludge will be pumped to a vacuum box.

Any sludge that is not removed by the method above will be accessed through the tank manways by personnel wearing OSHA Level C PPE and following confined space entry procedures. PPE will be upgraded to OSHA Level B if pre-entry 4-gas meter and hydrogen sulfide meter monitoring of vapor within an AST indicates a need. The sludge will be broken up as needed using a >3,000 psig pressure washer and lance and then pumped to vacuum boxes. Some materials may be moved by shovel and placed into the vacuum boxes or roll-offs.

#### Hazardous Waste Removal and Disposal

The sludge within the following ASTs was deemed to be hazardous via the aforementioned sampling by E<sup>2</sup> and analysis by ALS Environmental (as summarized in Table 2):

- ASTs 1 and 2
- AST 4
- ASTs 7-25
- AST 28
- Sump 44

The sludge from these 23 ASTs will be accessed from existing openings and 6" sample ports in the tops of the vessels using the same methods as the non-hazardous sludge described above. Prior to combining materials from two or more ASTs into a vacuum box, a "bucket test" will be performed to check if undesirable reactions occur. For this test, CHES will add a small sample of each AST planned to be mixed in a vacuum box, in the order it is to be added to the vacuum box, into a metal pail. The bucket sample will be inspected for signs of reaction prior to materials represented by the samples being loaded into the vacuum box. If the bucket test does not indicate any potential compatibility issues, the sludge will be pumped to a vacuum box, sampled and sent to the proposed disposal facility for acceptance testing. Upon acceptance by the disposal facility, the vacuum boxes will be shipped for disposal. If the bucket test shows signs of reactivity, non-compatible materials will not be bulked in the vacuum box with the incompatible materials from the other ASTs. Alternate plans will be developed for the transport of the individual AST non-compatible materials and reviewed with EPA prior to implementation.

The hazardous sludge from these 23 ASTs will be accessed from existing openings and 6" sample ports in the tops of the vessels, liquefied using an automated 3D nozzle and 10,000 psig high pressure water blaster, pumped to vacuum boxes with the sludge in Sumps 46 and 47 and sampled for acceptance by the disposal facility.

Any sludge that is not removed by the method above will be accessed through the tank manways using personnel wearing OSHA Level C PPE and following confined space entry procedures. PPE will be upgraded to OSHA Level B if pre-entry 4-gas meter and hydrogen sulfide meter monitoring of vapor within an AST indicates a need. The sludge will be broken up as needed using a >3,000 psig pressure washer and lance and then pumped to vacuum boxes. Some materials may be moved by shovel and placed into the vacuum boxes or roll-offs.

Representative samples will be collected on an as needed basis for each destination disposal facility acceptance determination. Upon acceptance by the disposal facility the sludge in vacuum boxes and roll-offs will be shipped to the Systech Fredonia facility, the Clean Harbors Deer Park Incinerator and/or the Clean Harbors LaPorte site.

*Equipment and Area Pressure Washing and Equipment Removal*

Following the removal of sludge from the ASTs and sumps, CHES will pressure wash the ASTs and equipment (pumps, pipe, etc.) and remove them for recycle. CHES will then pressure wash all the areas within the highlighted confines of Figure 1 and breach containment systems such that future rain water will freely flow out.

The ASTs will be accessed from existing openings and 6" sample ports in the tops of the vessels and washed using at least two passes of an automated 3D nozzle and 10,000 psig high pressure water blaster. The associated ancillary equipment (piping, pumps, etc.) will be pressure washed using a >3,000 psig pressure washer and lance. Personnel performing the washing will wear OSHA Level C PPE. If needed based on 4-gas meter or personal hydrogen sulfide monitor readings, PPE will be upgraded to OSHA Level B. The wash water from these operations will be pumped to a vacuum truck and sent to the Intergulf facility or one of the waste disposal facilities identified above.

Washing of the containment areas, the sumps, the shed east of the NTF and Truck Bays 45 and 48 (Figure 1) will be performed in the following steps:

1. Free water will be pumped to a vacuum truck.
2. Solid materials (plastic piping, wood debris, sludge, etc.) will be placed in a roll-off box and sludge (if present) will be placed into vacuum boxes, drums or totes. The containers will be sampled and profiled for acceptance to the Seabreeze, Coastal Plains and/or Conroe Landfills and upon acceptance will be shipped for disposal.
3. All areas will be pressure washed with at least two passes using a >3,000 psig pressure washer. Personnel performing the washing will wear OSHA Class C PPE. If needed based on 4-gas meter or personal hydrogen sulfide monitor readings, PPE will be upgraded to OSHA Class B. The wash water from these cleaning operations will be pumped to a vacuum truck.
4. Vacuum trucks will be sent to the Intergulf facility or one of the waste disposal facilities identified above.

It is expected that at least three rinsate samples will be collected upon the completion of the washing activities described in this section. The actual number and locations of rinsate samples will be decided in collaboration with EPA based on observed area conditions

The insulation of the ASTs (AST 3, AST 25) and piping within the NTF has been tested for asbestos containing materials (ACMs) by EFI Global, Inc. and no ACM was detected. Insulation materials will be removed and placed into roll off boxes for shipment to the Seabreeze, Coastal Plains and/or Conroe Landfills.

The washed metal components of the ASTs, piping, pumps, etc. will be shipped to a metals recycling company as scrap metal.

Any non-metal components within the project area identified by Figure 1 and used PPE generated by the project will be collected into roll-off boxes for shipment to the Seabreeze, Coastal Plains and/or Conroe Landfills.

The washed above ground containment areas (NTF, STF and Sumps 34, 35, 38, 40, 44, 46 and 47) will be breached in various areas to reduce the potential for future rainwater accumulation. Debris created from the breaching activities will be placed in one or more roll-offs for shipment to the Seabreeze, Coastal Plains and/or Conroe Landfills.



## Spill Prevention/Containment Plan

All the ASTs are in areas with secondary containment walls with the exception of AST 26, AST 27, Sump 46 and Sump 47, which contain only non-hazardous sludge and Sump 44 which contains hazardous sludge (TCLP benzene >0.5 mg/l). AST 26 and AST 27 are located northeast of the North Tank Farm. Sumps 44, 46 and 47 are located just south of the tank farm.

The work area will have spill supplies as PPE, shovels, brooms, drums, buckets, and absorbents staged in appropriate areas for possible use. A temporary secondary containment will be constructed using polyethylene sheeting around the access port handling area of ASTs 26 and 27 during the sludge removal.

At the beginning of each shift there will be a tail-gate meeting where the hazards for each task will be discussed with all team members. Included in the discussion will be procedures to deal with emergency situations including spill response and prevention. Numbers for on-site and off-site responders to different types of emergencies will be listed in the HASP and will be posted in the project office. As soon as any spill scenario is detected, it will be reported to the CHES Project Manager and the Respondents' on-site representative. Spill response personnel will have training that prepares them for their job functions and responsibilities including 29 CFR 1910.120 (HAZWOPER) and DOT. In the event of a spill, the CHES field crews will immediately contain the spill as necessary to prevent a release from the Site.

In the event of a spill, the contractor personnel observing the spill will notify on-site oversight representatives. If not on-site, EPA's OSC Adam Adams will be notified immediately thereafter at (214) 665-2779. In the event of any spill which causes or threatens a release of waste material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region 6, 214-665-3166, and the EPA Regional Emergency 24-hour telephone number, 1-866-372-7745. In addition, in the event of any release of a hazardous substance from the Site which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall immediately notify the OSC and the National Response Center at (800) 424-8802. A written report will be submitted to EPA within 7 days after a release of a hazardous substance from the Site that requires reporting to the National Response Center pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release.

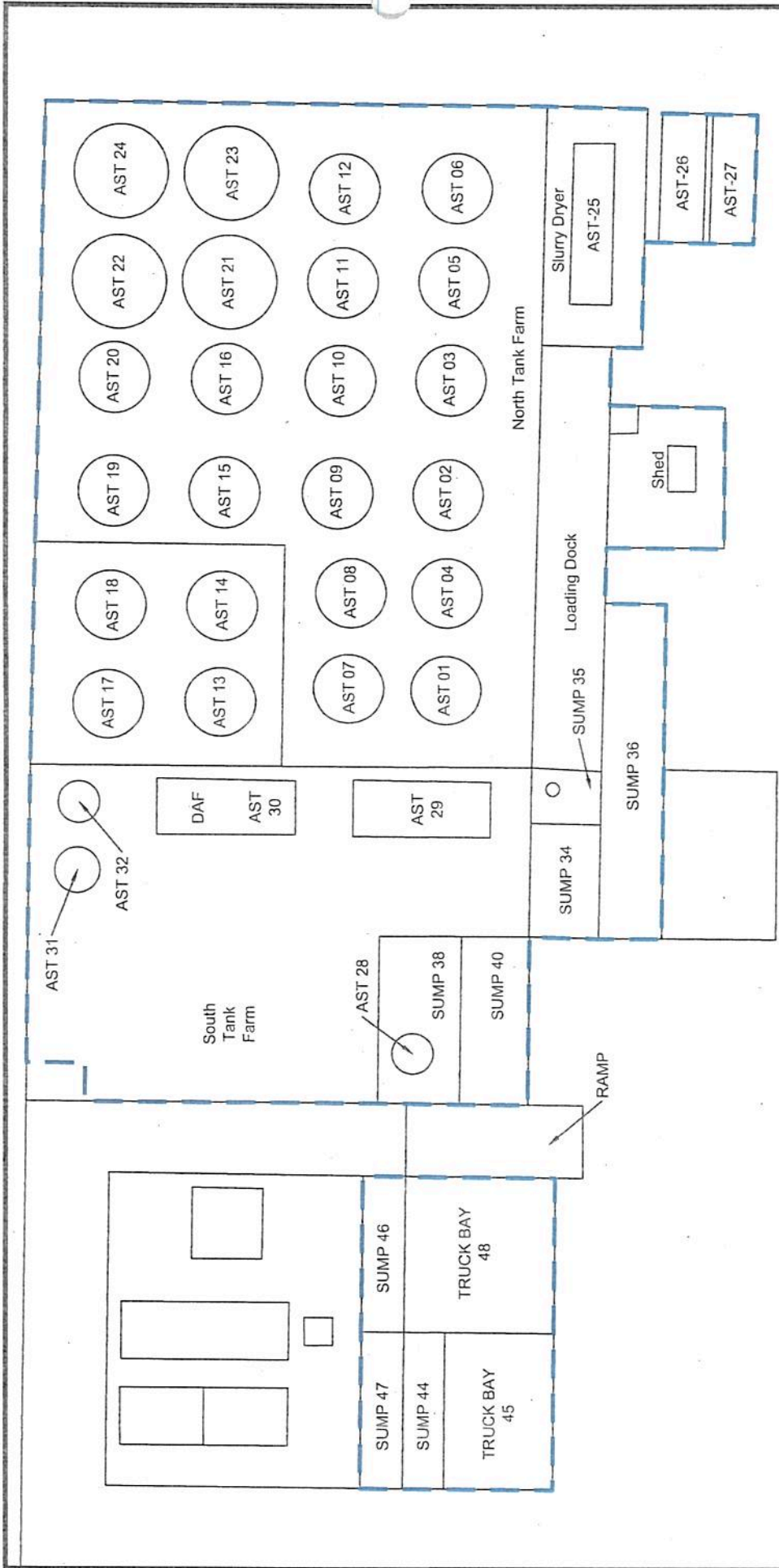
## Reporting

A removal action report will be prepared upon completion of this project covering the tank farm tank/sump content removal activities described in this Work Plan. This will include the previously completed liquid removal activities and the sludge removal activities described in this Work Plan. The report will include:

- Summary of activities performed to remove the AST and sump contents;
- Summary of activities performed to pressure wash the ASTs, sumps and containment areas and remove ASTs and equipment;
- Photographs documenting removal activities; and
- Shipping/disposal records (manifests, etc.).

**Schedule**

The removal action will be implemented as described herein. At least ten (10) calendar days prior to initiating the removal action field work, Respondents will submit the HASP to EPA. It is anticipated that the removal action field activities will be completed within one hundred twenty (120) calendar days following initiation. Respondents will provide written notification of completion of the removal action to EPA.



**US OIL RECOVERY SUPERFUND SITE**  
PASADENA, HARRIS COUNTY, TEXAS

Figure 1

**TANK FARM MAP**

PROJECT: 1737	BY: ADJ	REVISIONS
DATE: MAY, 2015	CHECKED: EFP	

**PASTOR, BEHLING & WHEELER, LLC**  
CONSULTING ENGINEERS AND SCIENTISTS

**EXPLANATION**

Removal Action  
Work Area



Not To Scale

## Table 1 - Waste Material Volume by AST/Sur

## Vertical Tanks

Tank #	Diameter	Height	Depth of Sludge	Volume Sludge C.Y.	Volume Sludge Gal	Waste
						Characterization <sup>1</sup>
	Ft	Ft	Ft	C.Y.	Gal	
AST 01	12	20	5.83	24	4,933	Hazardous - TCLP Benzene = 13.0 mg/l
AST 02	12	20	8.00	33	6,766	Hazardous - TCLP Benzene = 7.3 mg/l
AST 03	12	20	1.00	4	846	Non-Hazardous
AST 04	11	13.75	7.00	25	4,974	Hazardous - pH = 12.8
AST 05	12	20	1.00	4	846	Non-Hazardous
AST 06	12	20	4.08	17	3,450	Non-Hazardous
AST 07	12	20	10.25	43	8,668	Hazardous - TCLP Benzene = 4.0 mg/l
AST 08	12	20	7.00	29	5,920	Hazardous - TCLP Benzene = 2.2 mg/l
AST 09	12	20	4.00	17	3,383	Hazardous - TCLP Benzene = 1.7 mg/l
AST 10	12	20	9.00	38	7,611	Hazardous - TCLP Benzene = 1.3 mg/l
AST 11	12	20	5.00	21	4,229	Hazardous - TCLP Benzene = 0.93 mg/l
AST 12	12	20	3.00	13	2,537	Hazardous - TCLP Benzene = 3.9 mg/l
AST 13	12	20	11.00	46	9,303	Hazardous - TCLP Benzene = 1.1 mg/l
AST 14	12	20	9.50	40	8,034	Hazardous - TCLP Benzene = 0.92 mg/l
AST 15	12	20	13.00	54	10,994	Hazardous - TCLP Benzene = 5.5 mg/l
AST 16	12	20	5.00	21	4,229	Hazardous - TCLP Benzene = 1.1 mg/l
AST 17	12	20	2.00	8	1,691	Hazardous - TCLP Benzene = 1.2 mg/l
AST 18	12	20	12.00	50	10,148	Hazardous - TCLP Benzene = 1.6 mg/l
AST 19	12	20	9.00	38	7,611	Hazardous - TCLP Benzene = 2.3 mg/l
AST 20	12	20	9.00	38	7,611	Hazardous - TCLP Benzene = 4.3 mg/l
AST 21	16	26	17.67	132	26,566	Hazardous - TCLP Benzene = 1.4 mg/l
AST 22	16	26	16.67	124	25,063	Hazardous - TCLP Benzene = 1.9 mg/l
AST 23	16	26	17.08	127	25,679	Hazardous - TCLP Benzene = 2.5 mg/l
AST 24	16	26	17.25	128	25,935	Hazardous - TCLP Benzene = 2.0 mg/l
AST 28	6	7	3	3	634	Hazardous - pH = 13.1
				1078	217,664	

## Horizontal Tanks

Tank #	Diameter	Length	Sludge Ft	Sludge C.Y.	Sludge Gal	Waste
						Characterization <sup>1</sup>
	Ft	Ft	Ft	C.Y.	Gal	
AST 25	8	22	1.5	5.32	1,075	Hazardous - TCLP Benzene = 0.65 mg/l
AST 26	8	16	1.0	2.15	434	Non-Hazardous
AST 27	8	16	1.0	2.15	434	Non-Hazardous
AST 29	8	16	5.0	19.58	3,955	Non-Hazardous
				29.20	5,898	

## Rectangle Tank

Tank #	Length	Width	Depth	Depth of Sludge	Sludge Volume C.y.	Waste
						Characterization <sup>1</sup>
	Ft	Ft	Ft	Ft	C.y.	
AST 30	30	7.5	5.5	3.5	29.17	Non-Hazardous
Sump 44	20	6	6	2.0	8.89	Hazardous - TCLP Benzene = 1.5 mg/l
Sump 46	20	6	6	5.0	22.22	Non-Hazardous
Sump 47	20	6	6	2.0	8.89	Non-Hazardous
					69.17	

Total non hazardous sludge Volume 113 CY  
Total hazardous sludge volume with TCLP benzene >0.5ppm 1039 CY  
Total hazardous sludge volume with pH>12.5 28 CY

## Footnotes:

1. Refer to Table 2 for characterization results.

Table 2 - US08 Sledge Analytical Data Summary

Sample Location	Units	TCLP Regulatory Levels	AST 1	AST 2	AST 3	AST 4	AST 5	AST 6	AST 6 #1	AST 6 #2	AST 7	AST 7 Duplicate Sample #3	AST 8	AST 9	AST 9 NTF-AST 9	AST 10	AST 10 Field Duplicate #1	AST 10 NTF-AST 10	AST 11	AST 11 NTF-AST 11	AST 12	AST 12 NTF-AST 12	AST 13	AST 13 NTF-AST 13	AST 14	AST 14 NTF-AST 14	AST 15	AST 15 NTF-AST 15	
US08	mg L	1*	0.129	0.0794	0.0131 J	0.0000	0.00917 J	0.0103 J	0.00851 J	0.0874	0.0649	0.0172	0.0172	0.075	0.0675	0.0273 J	0.0273 J	0.0668	0.0519	0.0210 J	0.0210 J	0.0178 J	0.164	0.164	0.164	0.164	0.0858	0.0858	
US08	mg L	5	0.0162 J	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	-0.0100	
US08	mg L	100	0.400	0.791	0.171 J	0.0751 J	0.240	0.111 J	0.0751 J	0.239	0.581	0.240	0.111 J	0.240	0.0751	0.0751	0.240	0.0751	0.0751	0.240	0.0751	0.339	0.415	0.415	0.415	0.415	0.415	0.415	
US08	mg L	0.05	0.0050	-0.0070	-0.0070	-0.0050	-0.0070	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	-0.0050	
US08	mg L	1	0.0842	-0.1050	-0.1050	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842	0.0842
US08	mg L	5	0.0050	-0.0050	-0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050
US08	mg L	0.05	0.00199	0.00359 J	0.00292	0.00359 J	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292	0.00292
US08	mg L	70*	0.071	0.175	0.0131 J	0.0000	0.00917 J	0.0103 J	0.00851 J	0.0874	0.0649	0.0172	0.0172	0.075	0.0675	0.0273 J	0.0273 J	0.0668	0.0519	0.0210 J	0.0210 J	0.0178 J	0.164	0.164	0.164	0.164	0.0858	0.0858	
US08	mg L	5	0.0050	-0.0050	-0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050
US08	mg L	100	0.129	0.0794	0.0131 J	0.0000	0.00917 J	0.0103 J	0.00851 J	0.0874	0.0649	0.0172	0.0172	0.075	0.0675	0.0273 J	0.0273 J	0.0668	0.0519	0.0210 J	0.0210 J	0.0178 J	0.164	0.164	0.164	0.164	0.0858	0.0858	
US08	mg L	0.05	0.00129	0.00219 J	0.00181	0.00219 J	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181	0.00181
US08	mg L	0.05	0.000292	0.000519 J	0.000396	0.000519 J	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396
US08	mg L	5	0.0050	-0.0050	-0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050
US08	mg L	100	0.129	0.0794	0.0131 J	0.0000	0.00917 J	0.0103 J	0.00851 J	0.0874	0.0649	0.0172	0.0172	0.075	0.0675	0.0273 J	0.0273 J	0.0668	0.0519	0.0210 J	0.0210 J	0.0178 J	0.164	0.164	0.164	0.164	0.0858	0.0858	
US08	mg L	0.05	0.000292	0.000519 J	0.000396	0.000519 J	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396
US08	mg L	5	0.0050	-0.0050	-0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050
US08	mg L	100	0.129	0.0794	0.0131 J	0.0000	0.00917 J	0.0103 J	0.00851 J	0.0874	0.0649	0.0172	0.0172	0.075	0.0675	0.0273 J	0.0273 J	0.0668	0.0519	0.0210 J	0.0210 J	0.0178 J	0.164	0.164	0.164	0.164	0.0858	0.0858	
US08	mg L	0.05	0.000292	0.000519 J	0.000396	0.000519 J	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396	0.000396
US08	mg L	5	0.0050	-0.0050	-0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050	0.0050

Notes:  
1) Sample collected by Effective Environmental  
2) Analyte reported as non-detect by laboratory at associated method detection limit (MDL)  
3) Dotted values are concentrations detected above MDL  
4) Blank values are concentrations detected above MDL  
5) Reported concentrations are in mg/L  
6) L - This potentially low  
7) - Not analyzed  
\* Toxic Class 2 Regulatory Level



Table 2 - USOR Sludge Analytical Data Summary

Sample ID	Units	Trip Blank 120314-28	Trip Blank 120314-32	Trip Blank 120314-33	Trip Blank 120314-36	Trip Blank 120314-37	Trip Blank 120314-38	Trip Blank 120314-40	Trip Blank 120314-68	Equipment Blank #1	Equipment Blank #2
Date Sampled		12/8/2014	12/11/2014	12/16/2014	12/8/2014	12/15/2014	12/5/2014	12/8/2014	12/16/2014	12/5/2014	12/8/2014
<b>METALS</b>											
Antimony	mg/L	***	***	***	***	***	***	***	***	<0.00050 J	<0.00050 J
Arsenic	mg/L	***	***	***	***	***	***	***	***	<0.00100	<0.00100
Barium	mg/L	***	***	***	***	***	***	***	***	0.00674	0.01911 U
Beryllium	mg/L	***	***	***	***	***	***	***	***	<0.000700	<0.000700
Cadmium	mg/L	***	***	***	***	***	***	***	***	<0.000500	<0.000500
Chromium	mg/L	***	***	***	***	***	***	***	***	<0.00100	<0.00100
Copper	mg/L	***	***	***	***	***	***	***	***	<0.000500	<0.000500
Mercury	mg/L	***	***	***	***	***	***	***	***	0.000610 J	0.00241 J
Nickel	mg/L	***	***	***	***	***	***	***	***	<0.00100	<0.00100
Selenium	mg/L	***	***	***	***	***	***	***	***	<0.00100	<0.00100
Silver	mg/L	***	***	***	***	***	***	***	***	<0.000500	<0.000500
<b>VOCs</b>											
1,1-Dichloroethene	mg/L	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020 J
1,2-Dichloroethane	mg/L	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020 J
1,4-Dichlorobenzene	mg/L	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040 J
2-Chloroethene	mg/L	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	0.011	<0.00050 J
Benzene	mg/L	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020 J
Carbon tetrachloride	mg/L	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050	<0.00050 J
Chlorobenzene	mg/L	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040	<0.00040 J
Chloroform	mg/L	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020 J
Trichloroethene	mg/L	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020 J
Vinyl Chloride	mg/L	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020	<0.00020 J
<b>SVOCs</b>											
2,4,5-trichlorophenol	mg/L	***	***	***	***	***	***	***	***	<0.00018 J	<0.00018 J
2,4,6-trichlorophenol	mg/L	***	***	***	***	***	***	***	***	<0.00012 J	<0.00012 J
2,4-Dinitrophenol	mg/L	***	***	***	***	***	***	***	***	<0.00019 J	<0.00019 J
Cresols, Total	mg/L	***	***	***	***	***	***	***	***	<0.00030 J	<0.00030 J
Hexachlorobenzene	mg/L	***	***	***	***	***	***	***	***	<0.00019 J	<0.00019 J
Hexachlorobutadiene	mg/L	***	***	***	***	***	***	***	***	<0.00012 J	<0.00012 J
Hexachloroethane	mg/L	***	***	***	***	***	***	***	***	<0.00014 J	<0.00014 J
Nitrobenzene	mg/L	***	***	***	***	***	***	***	***	<0.00013 J	<0.00013 J
Pentachlorophenol	mg/L	***	***	***	***	***	***	***	***	<0.00014 J	<0.00014 J
Styrene	mg/L	***	***	***	***	***	***	***	***	<0.00013 J	<0.00013 J
<b>PH</b>	°F	***	***	***	***	***	***	***	***	>212	>212
<b>REACTIVE CYANIDE</b>	mg/kg	***	***	***	***	***	***	***	***	5.08 J	7.12 J
<b>REACTIVE SULFIDE</b>	mg/kg	***	***	***	***	***	***	***	***	<100	<100

Notes:  
 1) Samples collected by Effective Environmental  
 2) \* - Analyte reported as non-detect by laboratory at associated method detection limit (MDL)  
 3) Shaded values are concentrations detected above the MDL  
 4) Shaded values in yellow denotes detections with exceedances of TCLP Regulatory Levels  
 5) J - Reported concentration is estimated  
 6) - - - Not analyzed

APPENDIX E  
EQUIPMENT WASTE REMOVAL ACTION WORK PLAN



**APPENDIX E  
EQUIPMENT WASTE REMOVAL ACTION WORK PLAN**

**US OIL RECOVERY SUPERFUND SITE  
400 NORTH RICHEY AREA  
PASADENA, HARRIS COUNTY, TEXAS**

**Introduction**

This Work Plan describes activities that will be carried out by Respondents as they implement a time-critical Removal Action to address residual wastes within former process equipment at the US Oil Recovery Superfund Site (Site). Sixty-five (65) former process equipment items were inventoried in 2015 and residual wastes were identified in 13 of these items. Respondents removed the waste from and pressure washed six of these items (EQ-02, EQ-07 thru EQ-10 and EQ-29) during September 2015 to address potential near-term risks associated with possible release from these items. The remaining seven items containing waste and the estimated volumes of that residual waste are listed in Table 1.

Respondents contracted with Effective Environmental, Inc. (E<sup>2</sup>) to survey each equipment item in accordance with a prior EPA-approved Work Plan. Samples of the contained materials in the equipment items that contained amounts of process material were collected by E<sup>2</sup> in accordance with a prior EPA-approved Quality Assurance Sampling Plan (QASP) addendum and were classified as hazardous and non-hazardous waste based on the analytical results obtained from the sampling events. The analytical data for waste samples from the seven remaining equipment items are listed in Table 2.

This Work Plan describes the approach and procedures for removal of residual wastes contained in the seven remaining equipment items and pressure washing of the equipment to allow the potential removal and/or demolition, if needed, of some or all of the equipment items at the Respondent's discretion.

**Removal Action Responsibilities**

The waste removal and equipment pressure washing described herein will be performed by contractor(s) selected by the Respondents and approved by EPA. Oversight on behalf of the Respondents will be provided by EHS Support LLC (EHS) and Pastor, Behling & Wheeler, LLC (PBW). PBW will have personnel on-site full time who will be responsible for oversight of the contractor(s), compliance with the Work Plan and Site Health and Safety Plan (HASp), tracking the removal of wastes, and documenting site activities. Although not contracted directly with the contractor(s), PBW's on-site personnel will be acting as the Respondents' on-site representative and will have the Respondents' full authority to stop work and re-direct the contractor(s) compliance with approved Work Plan and HASp for this removal action. Deliverables and tracking documents will be provided to EPA by PBW through established Respondents communications and/or reporting methods.

**Health and Safety Plan**

The contractor(s) will operate under the overall Site Health and Safety Plan (HASp) dated May 2012 and prior to mobilization the primary Contractor will prepare a HASp specific to this removal action. The HASp will ensure the protection of the public health and safety during performance of the removal action and will be submitted to EPA for review. Changes to the plan recommended by EPA will be incorporated into the final plan that will be implemented during the pendency of the removal action. The HASp will describe appropriate personal protective equipment (PPE) for the anticipated hazards. All site workers shall receive the appropriate level of training according to 29 CFR 1910.120 that prepares them for their

job functions and responsibilities.

At a minimum, the PPE should include Level D PPE protection (i.e., hardhat, safety glasses, steel toe shoes, earplugs, and long sleeve shirt/pants) and activities associated with waste handling and sampling will be performed using Level C PPE protection. Personnel handling the materials (liquids or sludges) in or in the vicinity of the equipment or vacuum boxes SHALL have a functional personal hydrogen sulfide monitor on their person. Additional periodic air quality monitoring of the work area and continuous air monitoring of confined space entry areas will be performed using a 4-gas meter. PPE will be upgraded to OSHA Level B as needed based on readings from the 4-gas meters and hydrogen sulfide monitors.

### Removal Action Description

The desire of the PRP Group is to remove process wastes from the equipment, pressure wash the equipment and potentially remove selected pieces of equipment as scrap metal. Following a review of the analytical data provided in Table 2, it was determined that the most timely and effective plan would be via the following steps:

1. Remove waste materials from EQ-01, EQ-03 and EQ-11 through 15, including:
  - 197 tons (estimated approximate weight - See Table 1, Note 5) of non-hazardous material.
  - 86 tons (estimated approximate weight - See Table 1, Note 5) of hazardous material with TCLP- benzene concentrations >0.5 mg/L.
2. Wash equipment interiors in preparation for potential equipment removal (and/or demolition, if needed) as scrap at Respondents' discretion.
3. Potentially remove other equipment items (and/or demolish, if needed) as scrap at the Respondents' discretion. These equipment items were previously inspected, found to not contain process material and cleaned as needed as part of implementing a prior EPA-approved Work Plan.
4. Remove all used personal protective equipment (PPE) and other equipment, followed by contractor(s) demobilization from the Site.

With regard to Step One in this process:

- The contractor(s) will prepare and obtain approval of a waste profile for shipment of the non-hazardous sludge waste to: (1) the Seabreeze Environmental Landfill in Angleton, Texas; (2) the Waste Management Coastal Plains Landfill in Alvin, TX; and/or (3) the Waste Management Conroe Landfill in Conroe, TX.
- The contractor(s) will prepare and obtain approval of a waste profile for shipment of the hazardous waste. Upon facility acceptance, the hazardous waste will be shipped to: (1) the Systech Environmental Corporation Facility in Fredonia, KS (to be blended into a hazardous waste derived fuel for energy recovery at another site); (2) the Clean Harbors Deer Park Incinerator in Deer Park, TX; and/or (3) the Clean Harbors LaPorte, TX site (with subsequent shipment under Clean Harbors manifest to the Clean Harbors Thermal Desorption Unit in Lambton, Ontario, Canada). Upon facility acceptance and confirmation of EPA approval of these disposal facilities, waste shipment will be performed as described below.

*Waste Removal and Disposal*

Following receipt of the aforementioned approvals:

1. Non-hazardous liquid contained in Equipment Items EQ-01, EQ-03, EQ-12, EQ-14 and EQ-15 will be pumped into vacuum trucks for shipment to the Intergulf, Seabreeze, Coastal Plains and/or Conroe facilities. EPA will be notified if the waste profile is not approved by, or if individual shipments are not accepted by one of these facilities, in which case, approval of an alternative facility will be sought and obtained prior to use.
2. Non-hazardous sludge contained in Equipment Items EQ-01 and EQ-11 will be pumped into vacuum boxes for shipment to the Seabreeze, Coastal Plains and/or Conroe facility EPA will be notified if the waste profile is not approved by, or if individual shipments are not accepted by one of these facilities, in which case, approval of an alternative facility will be sought and obtained prior to use.
3. Hazardous sludge contained in Equipment Items EQ-13, EQ-14 and EQ-15 will be pumped into vacuum boxes for shipment to the Systech Fredonia facility, the Clean Harbors Deer Park Incinerator and/or the Clean Harbors LaPorte site. EPA will be notified if the waste profile is not approved by, or if individual shipments are not accepted by one of these facilities, in which case, approval of an alternative facility will be sought and obtained prior to use.

Non-Hazardous Waste Removal and Disposal

The liquids within the following equipment items were deemed to be non-hazardous via the aforementioned sampling by E<sup>2</sup> and analysis by ALS Environmental (as summarized in Table 2):

- EQ-01
- EQ-03
- EQ-12
- EQ-14
- EQ-15

The non-hazardous liquids from these five equipment items will be accessed from existing openings and pumped to vacuum trucks, vacuum boxes and/or totes for shipment to the Intergulf, Seabreeze, Coastal Plains, and/or Conroe facilities.

The sludge within the following equipment items was deemed to be non-hazardous via the aforementioned sampling by E<sup>2</sup> and analysis by ALS Environmental (as summarized in Table 2):

- EQ-01
- EQ-11

The non-hazardous sludge from these three equipment items will be accessed from existing openings, liquefied using an automated 3D nozzle and  $\geq 5,000$  psig high pressure water blaster and pumped to vacuum boxes for shipment to the Seabreeze, Coastal Plains, and/or Conroe Landfills. Prior to combining materials from two or more equipment items into a vacuum box, a "bucket test" will be performed to check if undesirable reactions occur. For this test, CHES will add a small representative sample of each equipment item planned to be mixed in a vacuum box, in the order it is to be added to the vacuum box, into a metal pail. The bucket sample will be inspected for signs of reaction prior to materials represented by the samples being loaded into the vacuum box. If the bucket test does not indicate any potential compatibility issues, the sludge will be to a vacuum box.

Any sludge that is not removed by the method above will be accessed through the equipment manways by personnel wearing OSHA Level C PPE and following confined space entry procedures. PPE will be upgraded to OSHA Level B if pre-entry 4-gas meter and hydrogen sulfide meter monitoring of vapor within a piece of equipment indicates a need. The sludge will be broken up as needed using a >3,000 psig pressure washer and lance and then pumped to vacuum boxes. Some materials may be moved by shovel and placed into the vacuum boxes or roll-offs.

#### Hazardous Waste Removal and Disposal

The sludge within the following equipment items was deemed to be hazardous via the aforementioned sampling by E<sup>2</sup> and analysis by ALS Environmental (as summarized in Table 2):

- EQ-13
- EQ-14
- EQ-15

The sludge from these three equipment items will be accessed from existing openings using the same methods as the non-hazardous sludge described above. Prior to combining materials from equipment items into a vacuum box, a "bucket test" will be performed to check if undesirable reactions occur. For this test, the contractor will add a small sample of each vessel planned to be mixed in a vacuum box, in the order it is to be added to the vacuum box, into a metal pail. The bucket sample will be inspected for signs of reaction prior to materials represented by the samples being loaded into the vacuum box. If the bucket test does not indicate any potential compatibility issues, the sludge will be pumped to a vacuum box. The analytical results from EQ-13, EQ-14 and EQ-15 are sufficiently similar and complete such that profile acceptance will be pursued prior to the initiation of field work. If needed, the vacuum box(s) will be sampled and sent to the proposed disposal facility for acceptance testing. Upon acceptance by the disposal facility, the vacuum boxes will be shipped for disposal. If the bucket test shows signs of reactivity, non-compatible materials will not be bulked in the vacuum box with the incompatible materials from the other equipment items and a separate vacuum box will be used for the incompatible material.

The hazardous sludge from these two vessels will be accessed from existing openings, liquefied using an automated 3D nozzle and  $\geq 5,000$  psig high pressure water blaster and pumped to vacuum boxes.

Any sludge that is not removed by the method above will be accessed through existing openings, or an opening created using a non-sparking cutting method, using personnel wearing OSHA Level C PPE and following confined space entry procedures. PPE will be upgraded to OSHA Level B if pre-entry 4-gas meter and hydrogen sulfide meter monitoring of vapor within an equipment item indicates a need. The sludge will be broken up as needed using a >3,000 psig pressure washer and lance and then pumped to vacuum boxes. Some materials may be moved by shovel and placed into the vacuum boxes or roll-offs.

Upon acceptance by the disposal facility the sludge in vacuum boxes and roll-offs will be shipped to the Systech Fredonia facility, the Clean Harbors Deer Park Incinerator and/or the Clean Harbors LaPorte site.

#### *Equipment Pressure Washing and Equipment Removal*

Following the removal of liquids and sludge from the former process equipment, the contractor will pressure wash the equipment and set it aside for recycle.

The equipment will be accessed from existing openings, or the openings cut in the equipment as described above, and washed using at least two passes of an automated 3D nozzle and  $\geq 5,000$  psig high pressure

water blaster or with at least two passes using a >3,000 psig pressure washer and lance. Personnel performing the washing will wear OSHA Level C PPE. If needed based on 4-gas meter or personal hydrogen sulfide monitor readings, PPE will be upgraded to OSHA Level B. The wash water from these operations will be pumped to a vacuum truck and sent to the Intergulf facility or one of the waste disposal facilities identified above.

At the Respondents' discretion some or all of the pieces of cleaned equipment will be demolished and/or removed from the site by selling it to scrap metal company.

Any non-metal components encountered and used PPE generated by the project will be collected into roll-off boxes for shipment to the Seabreeze, Coastal Plains and/or Conroe Landfills.

### **Spill Prevention/Containment Plan**

The work area will have spill supplies as PPE, shovels, brooms, drums, buckets, and absorbents. At the beginning of each shift there will be a tail-gate meeting where the hazards for each task will be discussed with all team members. Included in the discussion will be procedures to deal with emergency situations including spill response and prevention. Numbers for on-site and off-site responders to different types of emergencies will be listed in the HASP and will be posted in the project office. As soon as any spill scenario is detected, it will be reported to the Contractor Project Manager and the USOR Group's on-site representative. Spill response personnel will have training that prepares them for their job functions and responsibilities including 29 CFR 1910.120 (HAZWOPER) and DOT. In the event of a spill, the contractor(s) field crews will immediately contain the spill as necessary to prevent a release from the Site.

In the event of a spill, the Respondents and/or container removal Contractor(s) notify on-site oversight representatives. If not on-site, EPA's OSC Adam Adams will be notified immediately thereafter at (214) 665-2779. In the event of any spill which causes or threatens a release of waste material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region 6, 214-665-3166, and the EPA Regional Emergency 24-hour telephone number, 1-866-372-7745. In addition, in the event of any release of a hazardous substance from the Site which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall immediately notify the OSC and the National Response Center at (800) 424-8802. A written report will be submitted to EPA within 7 days after a release of a hazardous substance from the Site that requires reporting to the National Response Center pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release.

### **Reporting**

A removal action report will be prepared upon completion of this project covering the former process equipment content removal activities described in this Work Plan. The report will include:

- Summary of activities performed to remove the equipment contents;
- Summary of activities performed to pressure wash and remove equipment;
- Photographs documenting removal activities; and
- Shipping/disposal records (manifests, etc.).

**Schedule**

The removal action will be implemented as described herein. At least ten (10) calendar days prior to initiating the removal action field work, Respondents will submit the HASP to EPA. It is anticipated that the removal action field activities will be completed within one hundred twenty (120) calendar days following initiation. Respondents will provide written notification of completion of the removal action to EPA.

**Table 1**  
**Former Process Equipment Estimated**  
**Residual Waste Volumes**  
**US Oil Recovery Superfund Site**  
**Pasadena, Texas**

Equipment Name <sup>(1)</sup>	Description	Estimated Liquid Volume (gallons)	Estimated Liquid Weight <sup>(2)</sup> (tons)	Estimated Sludge Volume (Cubic Feet)	Estimated Sludge Volume (gallons)	Estimated Sludge Weight <sup>(3)</sup> (tons)
USOR-EQ-01(a)	Heated and Agitated Frac Tank	2,290	9	398	2,977	15
USOR-EQ-01(b)	Heated and Agitated Frac Tank	NP	NP	361	2,702	14
USOR-EQ-03	Light Blue Horizontal Tank	20,344	81	NP	NP	NP
USOR-EQ-11	Large Blue Hopper	NP	NP	1,677	12,543	63
USOR-EQ-12	Rectangular Mix Tank	151	1	NP	NP	NP
USOR-EQ-13	ICP Tank A	NP	NP	1,168	8,739	44 <sup>(5)</sup>
USOR-EQ-14	ICP Tank B	3,058	12	1,068	7,985	40 <sup>(5)</sup>
USOR-EQ-15	Rectangular Mix Tank	1,044	4	63	475	2 <sup>(5)</sup>
Total --->		26,887	108	4,735	35,421	177

**Notes:**

1. USOR-EQ-01 has more than one compartment. Compartments are designated with a letter at the end of the equipment name. Sludge samples from each compartment were composited to create a single sample sent for analysis (see Table 2). Measurable liquid was present in only one compartment and thus no sampling compositing was used.
2. Assumed weight for liquids was 8 pounds per gallon
3. Assumed weight for sludge was 10 pounds per gallon
4. NP = not present or not present in significant amounts
5. Hazardous material due to benzene TCLP concentration >0.5 mg/L. Total hazardous material = 86 tons (EQ-13, EQ-14, and EQ-15 solids). Total non-hazardous material = total liquid and sludge tons (108 + 177) - hazardous material tons (86) = 197 tons

Table 2  
Equipment Waste Analytical Results  
US Oil Recovery Superfund Site  
Pasadena, Texas

Sample Identification	TCLP Regulatory Levels	USOR-EQ-01		USOR-EQ-03		USOR-EQ-11		USOR-EQ-12		USOR-EQ-13		USOR-EQ-14		USOR-EQ-15		USOR-EQ-15		
		Heated & Agitated Frac Tank, Liquid	Heated & Agitated Frac Tank, Sludge	Li. Blue Horizontal Cylinder	Large Blue Hopper	Rectangular Mix Tank, Liquid	ICP Tank A, Sludge	ICP Tank B, Liquid	ICP Tank B, Sludge	Rectangular Mix Tank, Liquid	Rectangular Mix Tank, Sludge	DUP	Rectangular Mix Tank, Liquid	Rectangular Mix Tank, Sludge				
Date Sampled	Units	3/4/2015		3/3/2015		3/4/2015		3/4/2015		3/4/2015		3/5/2015		3/4/2015		3/4/2015		
<b>TCLP METALS</b>																		
Arsenic	5	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	0.0163 J	<0.0100	0.0212 J	0.0166 J	<0.0100	<0.0100	<0.0100	
Barium	100	0.0684 J	2.59	0.166 J	0.552	0.329	0.264	0.0649 J	0.0649 J	0.0649 J	0.0649 J	0.0893 J	0.140 J	<0.0450	0.0991 J	<0.0080	<0.0080	
Cadmium	1	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	
Chromium	5	<0.0100	<0.0100	0.0404 J	<0.0100	<0.0100	<0.0100	1.77	1.77	1.77	1.77	0.126	0.285 J	1.88 J	<0.0100	<0.0100	<0.0100	
Lead	5	<0.00700	0.0147 J	0.0120 J	<0.00700	<0.00700	<0.00700	<0.00700	<0.00700	<0.00700	<0.00700	0.0194 J	<0.00700	<0.0350	<0.00700	<0.00700	<0.00700	
Mercury	0.2	<0.0000420	<0.0000420	0.000585	0.0000640 J	0.000477	0.0000690 J	0.00203	0.0000960 J	0.0000960 J	0.0000960 J	<0.000168	0.00224	<0.0000420	<0.0000420	<0.0000420	<0.0000420	
Selenium	1	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	0.0223 J	<0.0100	0.0223 J	<0.0100	0.0113 J	0.0236 J	<0.0100	<0.0100	<0.0100	<0.0100	
Silver	5	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	<0.00800	
<b>TCLP VOCs</b>																		
1,1-Dichloroethene	0.7	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	
1,2-Dichloroethane	0.5	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	
1,4-Dichlorobenzene	7.5	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	
2-Butanone	200	0.074 J	0.091 J	0.14 J	<0.020	<0.020	0.058 J	1.8	0.052 J	1.7	0.052 J	1.7	0.052 J	1.9	0.050 J	<0.010	<0.010	
Benzene	0.5	<0.012	0.34	0.15	<0.012	<0.012	0.60 (7)	0.049 J	0.73 (6)	0.049 J	0.73 (6)	0.35 J	0.074 J	1.7 (8)	<0.010	<0.010	<0.010	
Carbon tetrachloride	0.5	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	
Chlorobenzene	100	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	
Chloroform	6	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	<0.012	
Tetrachloroethene	0.7	<0.012	<0.012	0.016 J	<0.012	<0.012	0.018 J	<0.012	0.018 J	<0.012	0.018 J	<0.012	<0.012	<0.012	0.030 J	<0.010	0.17	
Trichloroethene	0.5	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	0.022 J	<0.010	0.022 J	<0.010	0.026 J	<0.010	<0.010	<0.010	<0.010	
Vinyl chloride	0.2	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	<0.0080	
<b>TCLP SVOCs</b>																		
2,4,5-Trichlorophenol	400	<0.0090	<0.0090	<0.045	<0.014	<0.0090 J	<0.0090	<0.049	<0.0090	<0.049	<0.0090	<0.049	<0.025 J	<0.0090	<0.0090	<0.0090	<0.0090	
2,4,6-Trichlorophenol	2	<0.014	<0.014	<0.070	<0.021	<0.014 J	<0.014	<0.076	<0.014	<0.076	<0.014	<0.076	<0.038 J	<0.014	<0.014	<0.014	<0.014	
2,4-Dinitroethene	0.13	<0.010	<0.010	<0.050	<0.015	<0.010	<0.010	<0.055	<0.010	<0.055	<0.010	<0.055	<0.027 J	<0.010	<0.010	<0.010	<0.010	
Cresols, Total	200	0.18	0.54	<0.10	0.16 J	<0.020 J	0.22	3.8	0.54	3.9	0.54	3.9	2.8 J	0.17	0.17	0.17	0.17	
Hexachlorobenzene	0.13	<0.011	<0.011	<0.055	<0.016	<0.011	<0.011	<0.060	<0.011	<0.060	<0.011	<0.060	<0.030	<0.011	<0.011	<0.011	<0.011	
Hexachlorobutadiene	0.5	<0.011	<0.011	<0.055	<0.016	<0.011	<0.011	<0.060	<0.011	<0.060	<0.011	<0.060	<0.030	<0.011	<0.011	<0.011	<0.011	
Hexachloroethane	3	<0.010	<0.010	<0.050	<0.016	<0.010	<0.010	<0.055	<0.010	<0.055	<0.010	<0.055	<0.027	<0.010	<0.010	<0.010	<0.010	
Nitrobenzene	2	<0.0080	<0.0080	<0.040	<0.012	<0.0080	<0.0080	<0.044	<0.0080	<0.044	<0.0080	<0.044	<0.022	<0.0080	<0.0080	<0.0080	<0.0080	
Pentachlorophenol	100	<0.016	<0.016	<0.080	<0.024	<0.016 J	<0.016	<0.087	<0.016	<0.087	<0.016	<0.087	<0.044 J	<0.016	<0.016	<0.016	<0.016	
Pyridine	5	<0.020	<0.020	<0.10	<0.030	<0.020	<0.020	<0.11	<0.020	<0.11	<0.020	<0.11	<0.055	<0.020	<0.020	<0.020	<0.020	
IGNITABILITY	<140	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	
IGNITABILITY, Solid	Burn rate	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	>212	
pH	>2, >12.5	5.45 J	6.01 J	9.35 J	8.40 J	8.03 J	7.76 J	7.45 J	7.01 J	7.69 J	7.89 J	7.89 J	7.89 J	7.89 J	7.89 J	7.89 J	7.89 J	
REACTIVE CYANIDE	mg/Kg	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	
REACTIVE SULFIDE	mg/Kg	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	<100	

Notes:  
 1) Samples collected by Effective Environmental  
 2) < - Analytic reported as non-detect by laboratory at associated method detection limit (MDL)  
 3) Bolded values are concentrations detected above MDL  
 4) Shaded values in yellow denotes detections with exceedances of regulatory levels  
 5) J - Reported concentration is estimated  
 6) L - Bias potentially low