

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

IN THE MATTER OF:

QUENDALL TERMINALS SUPERFUND  
SITE

Renton, Washington,

Quendall Terminals,

Altino Properties, Inc.

and

J.H. Baxter & Co.,  
a California Limited Partnership

Respondents.

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

Docket No.: CERCLA-10-2006-0325

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

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

## **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 Quendall Terminals, Altino Properties, Inc., and J.H. Baxter & Co., a California Limited Partnership (Respondents). The Settlement Agreement concerns the preparation and performance of a remedial investigation and feasibility study (RI/FS) for the Quendall Terminals Superfund Site (Site) and the reimbursement for future response costs incurred by EPA in connection with the RI/FS.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D, and delegated within Region 10 to the Unit Managers within the Office of Environmental Cleanup.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the National Oceanographic and Atmospheric Administration, the United States Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources and the Muckleshoot Tribe on February 15, 2006, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources within their jurisdiction.

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. 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 V and VI of this Settlement Agreement. 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, validity or terms of this Settlement Agreement.

## **II. PARTIES BOUND**

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

6. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

7. At least thirty days prior to the conveyance of any interest in the property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, Respondents shall give the grantee written notice of (a) this Settlement Agreement; (b) the status of the response actions at the Site; and (c) EPA's listing of the Site on the National Priorities List. At least thirty days prior to such conveyance, Respondents shall give written notice to EPA of the proposed conveyance, including the name and address of the grantee and the date on which written notice was given to the grantee.

8. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement.

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

### **III. STATEMENT OF PURPOSE**

10. In entering into this Settlement Agreement, the objectives of EPA and Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Remedial Investigation as more specifically set forth in the Statement of Work (SOW) attached as Appendix A to this Settlement Agreement; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study as more specifically set forth in the SOW in Appendix A to this Settlement Agreement; and (c) to recover response and oversight costs incurred by EPA with respect to this Settlement Agreement.

11. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall include all appropriate and necessary information for the RI/FS, in accordance with the SOW, to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (NCP). Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

### **IV. DEFINITIONS**

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

below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

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

c. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXX.

d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. “Engineering Controls” shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

f. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs 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, Agency for Toxic Substances and Disease Registry (ATSDR) costs, the costs incurred pursuant to Paragraph 55 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 41 (Emergency Response) and Paragraph 84 (Work Takeover). Future Response Costs shall also include the costs, if any, of redoing any documents, submissions or other Work required by this Settlement Agreement, performing the Baseline Risk Assessment, and preparing the Proposed Plan, Record of Decision and response to comments.

g. “Institutional controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, special building permit requirements, and well drilling prohibitions.

h. “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.

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. References to paragraphs in the SOW will be so identified (for example, “SOW paragraph 15”).

k. “Parties” shall mean EPA and 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. “Respondents” shall mean Altino Properties, Inc. (Altino), J.H. Baxter & Co. (Baxter), a California Limited Partnership, and Quendall Terminals, a joint venture formed by Altino and Baxter.

n. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral. References to sections in the SOW will be so identified; for example as “SOW Section V”.

o. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

p. “Site” shall mean the Quendall Terminals Superfund Site, as depicted on the map attached as Appendix B.

q. “State” shall mean the State of Washington.

r. “Statement of Work” or “SOW” shall mean the Statement of Work for development of a RI/FS for the Site, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

s. “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) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

t. “Work” shall mean all activities Respondents are required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

## V. FINDINGS OF FACT

13. The Quendall Terminals Superfund Site is a twenty-five acre property located at 4503 Lake Washington Boulevard North, in Renton, WA. The property has been in industrial use since its development in 1916 as a tar refinery. The facility was used for over fifty years for manufacturing creosote and other coal tar products. Between 1969 and 1978, the facility was used intermittently to store crude oil, waste oil and diesel. Since 1977, the Site has been used as a log sorting and storage yard.

14. Reilly Tar and Chemical Corporation and its predecessor owned and operated a creosote manufacturing facility at the Site for over fifty years. In 1971, the Site was sold to Quendall Terminals.

15. Creosote was manufactured onsite for about fifty-three years until 1969. The creosote manufacturing facility refined and processed coal tar and oil-gas tar residues. The tars (i.e., coal tars and oil gas tars) that were used as raw materials for the manufacturing process consist of primarily polyaromatic hydrocarbons (PAHs), phenolic compounds (phenyl and methyphenols), light aromatic compounds (including benzene, ethylbenzene, toluene, and xylene (BETX)) and other organic compounds. Tar was commonly shipped or barged to the Site and pumped through transfer lines that ran along a former wharf and pipe trestle (also known as the T-dock), or from the dock to two 2,000,000 gallon storage tanks located in the west central tank farm area. The tanks contained heating elements to keep the liquid warm, so that it could be transferred to the still house where the tars were refined to produce creosote and distillates. The tar distillates were further refined to produce naphthalene, xylene, benzene, toluene mixtures and other organic products. These products were stored in onsite tanks until shipment.

16. Releases to the environment of tars and creosote products have occurred in portions of the Site where products were transported, produced and/or stored. The primary chemicals of concern are PAHs and BETX compounds, and principally the carcinogenic PAHs and benzene.

17. Dense Non-Aqueous Phase Liquid (DNAPL) has been found in a number of monitoring wells in the shallow aquifer. DNAPL has been found in the area to the north of the old tank farm and around a pond used for surface water management. Most of the DNAPL is located in the top twenty feet of soil and below the water table.

18. Contaminated soil is present at the property at varying depths up to nineteen feet below ground surface. Soil contaminants exceed Model Toxics Control Act (MTCA) cleanup levels for direct contact.

19. Groundwater at the Site was also found to be contaminated with PAHs, phenols and BETX at elevated levels, especially in the area north of the old tank farm and around a pond used for surface water management. Contaminated onsite ground water is migrating into Lake Washington. Seeps have been observed along the shoreline.

20. Off-shore sediments are contaminated with PAHs. High concentrations of PAHs were found in a well located approximately thirty feet offshore in an area containing creosote contaminated sediments. Areas of highest concentrations were found in the area where the end

of the T-dock was formerly located, which is approximately 700 feet off shore, and closer to the shore (less than 200 feet) along the former T-dock and the south pier.

21. Pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B), EPA added Quendall Terminals to the National Priorities List, 71 Fed. Reg. 20016 (April 19, 2006).

## **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

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

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

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

25. Respondents are “persons” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

26. Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622. Respondents are persons who either: currently own or operate the facility; owned or operated the facility at the time of disposal of any hazardous substances at the Site; generated the hazardous substances found at the Site; or, arranged for disposal or transport for disposal of hazardous substances at the Site. Respondents therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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

28. EPA has determined that Respondents are qualified to conduct the R1/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

## **VII. SETTLEMENT AGREEMENT AND ORDER**

29. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Settled, Ordered and Agreed that 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.

## VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

30. Selection of Lead Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the lead personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of 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. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacements within thirty days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. Respondents reserve the right to dispute EPA's attempt to recover such costs pursuant to the dispute resolution procedures of this Settlement Agreement. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes or additions in the lead personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

31. Within ten days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. As needed, the Project Coordinator shall be present on Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within thirty days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA ten days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification.

32. EPA has designated Lynda Priddy of the Office of Environmental Cleanup as its Project Coordinator. EPA will notify Respondents of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall

direct all submissions required by this Settlement Agreement to the Project Coordinator at 1200 Sixth Avenue, Seattle WA 98101, M/S ECL-111. The SOW may specify alternative electronic submission instructions for specified submissions.

33. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

34. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan.

## **IX. WORK TO BE PERFORMED**

35. Respondents shall conduct the RI/FS in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The Remedial Investigation ("RI") shall consist of evaluating data to characterize site conditions, collecting data (if necessary), determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study ("FS") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by EPA, Respondents shall submit in electronic form all portions of any plan, report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement.

36. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

37. Modification of the SOW.

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within thirty days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator by telephone within twenty-four hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the SOW, EPA shall modify or amend the SOW in writing accordingly. Respondents shall perform the SOW, as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved SOW, other additional Work may be necessary to accomplish the objectives of the RI/FS. Respondents agree to perform these response actions in addition to those required by the initially approved SOW, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS.

d. Respondents shall confirm their willingness to perform the additional Work in writing to EPA within twenty-one days of receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS SOW or written RI/FS SOW supplement. EPA reserves the right to conduct the Work itself, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further necessary response actions at the Site.

38. Off-Site Shipment of Waste Material. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed ten cubic yards.

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

39. Meetings. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

40. Progress Reports. In addition to the plans, reports and other deliverables set forth in this Settlement Agreement, Respondents shall provide to EPA monthly progress reports by the tenth day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) identify the sampling and tests completed in executing the SOW and schedule for providing such data to EPA following QA/QC, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, 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.

41. Emergency Response and Notification of Releases.

a. 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, Respondents shall immediately take all appropriate action. 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. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at 206-553-1263, and the EPA Regional Emergency twenty-four hour telephone number, (800) 424-8802, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any unpermitted release of a hazardous substance from the Site, Respondents shall immediately notify the EPA Project Coordinator, or Regional Duty Officer at 206-553-1263, and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

## **X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

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

43. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 42(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA subject only to Respondents' right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 42(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

### **44. Resubmission.**

a. Upon receipt of a notice of disapproval, Respondents shall, within the time specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 45 and 46.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondents shall not proceed further with any activities or tasks associated with a deficient portion of the submission until receiving EPA approval, approval on condition or modification of relevant deliverables, unless otherwise agreed by EPA.

45. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Respondents shall implement

any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XV (Dispute Resolution).

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

47. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

48. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

49. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

## **XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION**

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

### **51. Sampling.**

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 40 of this Settlement Agreement. EPA will make available to

Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondents shall verbally notify EPA at least fourteen days prior to conducting significant field events as described in the SOW, work plans or, Sampling and Analysis Plan (if required). At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

52. Access to Information.

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

b. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified 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, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondents assert business confidentiality claims.

c. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA 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 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.

53. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement Agreement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains the objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen days of the monthly progress report containing the data.

## **XII. SITE ACCESS**

54. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date, provide EPA and its 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.

55. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within ninety days after the need for such access has been identified, or as otherwise specified in writing by the EPA Project Coordinator. Respondents shall immediately notify EPA if after using Respondents' best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing Respondents' efforts to obtain access. If Respondents cannot obtain access agreements, EPA may either (i) obtain access for Respondents or assist 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. 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 XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondents shall integrate the results of any such tasks or activities undertaken by EPA into its reports and other deliverables.

56. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

### **XIII. COMPLIANCE WITH OTHER LAWS**

57. Respondents shall comply with all applicable local, state and federal laws and regulations when performing the RI/FS. 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, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

### **XIV. RETENTION OF RECORDS**

58. During the pendency of this Settlement Agreement and for a minimum of five years after commencement of construction of any remedial action, each Respondent 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 each Respondent's possession or control or which come into Respondent's possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until five years after commencement of construction of any remedial action, Respondents shall also instruct their contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work. Respondents are not required to retain copies of documents that have been submitted to EPA pursuant to this Settlement Agreement.

59. At the conclusion of this document retention period at such time as Respondents intend to destroy such documents, records or other information, each Respondent shall notify EPA at least ninety days prior to the destruction, and, upon request by EPA, each Respondent shall deliver any such documents, records, or other information to EPA. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, Respondents shall provide EPA 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 asserted by Respondents. However, no documents, records or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

60. Each Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since 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.

## **XV. DISPUTE RESOLUTION**

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

62. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, Respondents shall notify EPA in writing of the objection(s) within fourteen days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have fourteen days from EPA's receipt of 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 may be granted verbally but must be confirmed in writing.

63. 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 Director of the Office of Environmental Cleanup or his/her Associate Director will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, 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 Respondents agree with the decision.

## **XVI. STIPULATED PENALTIES**

64. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 5 and 66 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the Work under this Settlement Agreement or any activities contemplated under any SOW or other plans approved under this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, 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.

### **65. Stipulated Penalty Amounts - Work.**

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Subparagraph 65(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$2,500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$5,500	31 <sup>st</sup> through 90 <sup>th</sup> day

b. Compliance Milestones

1. Failure to timely submit any of the following major deliverables: draft and final Summary of Existing Information and Data Quality; draft and any revised Information and Data Collection Work Plan; draft and any revised Baseline Risk Assessment; draft and any revised RI or FS Report, and any final or revised Final RI/FS Report.
2. Failure to timely initiate EPA-approved field work.

66. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to timely submit any other reports or written documents, including progress reports; or timely pay Future Response Costs pursuant to 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
\$1,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$2,000	31 <sup>st</sup> through 90 <sup>th</sup> day

67. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XX (Reservation of Rights by EPA), Respondents shall be liable for a stipulated penalty in the amount equal to the cost of the assumed work. Payment of this stipulated penalty is in addition to any amount required to be paid as Future Response Costs.

68. 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 X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31<sup>st</sup> day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (2) with respect to a Dispute Resolution decision as set forth in Paragraph 63 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date that the final decision is issued regarding such dispute. Nothing

herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

70. All penalties accruing under this Section shall be due and payable to EPA within thirty days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, EPA Region 10 Superfund, P.O. Box 371099M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 1044, the EPA Docket Number CERCLA-10-2006-0325, and the name and address of the Respondents. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to EPA as provided in Paragraph 32, and to the EPA Project Coordinator at the address set forth in Paragraph 32 of this Settlement Agreement, and the Region 10 Accounts Receivable, EPA Cincinnati Finance Center, MS-NWD, Cincinnati, OH 45268.

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

72. Penalties shall continue to accrue as provided in Paragraph 68 during any dispute resolution period, but need not be paid until fifteen days after the dispute is resolved by agreement or by receipt of EPA's decision. In the alternative, Respondents may pay the penalties into an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Washington and remit to that escrow account funds equivalent to the amount of the contested penalties. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested penalties, 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 bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within five days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 78 or 79. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the penalty (plus associated accrued interest) for which Respondents did not prevail to EPA in the manner described in Paragraph 78 or 79. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its penalties.

73. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 69.

74. 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 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(1) of CERCLA, 42 U.S.C. § 9622(1), 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(1) 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 84. Notwithstanding any other provision of this Section, EPA may, in its non-reviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

## **XVII. FORCE MAJEURE**

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

76. 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, Respondents shall notify the EPA Project Manager orally within forty-eight hours of when Respondents first knew that the event might cause a delay. Within seven days thereafter, 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; Respondents' rationale for attributing such delay to a force majeure event if Respondents intend to assert such a claim; and a statement as to whether, in the opinion of 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 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.

77. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to

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

## **XVIII. PAYMENT OF RESPONSE COSTS**

### **78. Payments of Future Response Costs.**

a. Within thirty days of the Effective Date, Respondents shall make a first prepayment of Future Response Costs in the amount of \$66,667 which shall be deposited by EPA in the Quendall Terminals Future Response Costs Special Account, within the EPA Hazardous Substances Superfund. Within sixty days of the Effective Date, Respondents shall make a second prepayment of Future Response Costs in the amount of \$66,667 which shall be deposited by EPA in the Quendall Terminals Future Response Costs Special Account, within the EPA Hazardous Substances Superfund. Within ninety days of the Effective Date, Respondents shall make a third prepayment of Future Response Costs in the amount of \$66,666 which shall be deposited by EPA in the Quendall Terminals Future Response Costs Special Account, within the EPA Hazardous Substances Superfund. These funds shall be retained and used by EPA to conduct or finance Future Response Costs. Payment shall be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Respondents and EPA Site/Spill ID number 1044. Respondents shall send the check(s) to: Mellon Bank, EPA Region 10, Superfund, P.O. Box 371099M, Pittsburgh, PA 15251.

b. At the time of each payment, Respondents shall send notice that payment has been made to the EPA Project Coordinator and the EPA Cincinnati Financial Center at this address: Servicing Finance Office, EPA Cincinnati Finance Center, MS-NWD, Cincinnati, OH 45268.

c. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS or other regionally prepared cost summary which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within thirty days of receipt of each bill requiring payment, except as otherwise provided in this Section of this Settlement Agreement. Respondents shall make all payments required by this Paragraph in the manner required by Subparagraph 78.a., with notice as required by Subparagraph 78.b. The total amount paid will be deposited by EPA in the Quendall Terminals Future Response Costs Special Account within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA to conduct or finance Future Response Costs. Once EPA receives payments under this Subparagraph it will use these funds to finance Future Response Costs and not funds received pursuant to 78.a. Any amounts remaining in the Future Response Costs Special Account will be disbursed in accordance with Subparagraph 78.e.

d. In the event that EPA's use of the Quendall Terminals Future Response Costs Special Account results in there being \$40,000, or less in the Quendall Terminals Response Costs Special Account at any time, Respondents agree, within thirty days of EPA's notice that the Quendall Terminals Response Costs Special Account has reached \$40,000, or less, to remit to EPA \$40,000, or a lesser amount as determined by EPA, for deposit in the Quendall Terminals Future Response Costs Special Account, in accordance with the payment procedure described in Subparagraph 78.a. and 78.b. Any amounts received under this Subparagraph will be credited to Respondents in any payment request under Subparagraph 78.c. or final accounting in Subparagraph 78.e.

e. After EPA issues its written Notice of Completion and EPA has performed a final accounting of Future Response Costs, EPA shall offset the final bill for Future Response Costs by the unused amount paid by the Respondents pursuant to Subparagraphs 78a. or 78.d. and then remit and return to Respondents any unused amount of the funds paid by Respondents pursuant to Subparagraphs 78.a. or 78.d.

79. If Respondents do not pay Future Response Costs in accordance with this Section, Respondents shall pay Interest on the unpaid balance of such Future Response Costs. The Interest on unpaid Future Response Costs required by Subparagraph 78.c. and Subparagraph 78.d. shall begin to accrue thirty days from the date of receipt 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 Section shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Section in the manner described in this Section.

80. Respondents may contest payment of any Future Response Costs if Respondents determine that EPA has made an accounting error or if Respondents believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection and any request for supporting documentation, limited to the disputed costs, shall be made in writing within thirty days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. Upon request for supporting documentation, EPA shall provide Respondents with supporting documentation of EPA's costs consistent with EPA policy. In the event of an objection, Respondents shall within the thirty day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 78. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Washington and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within five days of the resolution of the dispute, Respondents shall pay the sums due

(with accrued interest) to EPA in the manner described in Paragraph 78. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which Respondents did not prevail to EPA in the manner described in Paragraph 78. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for EPA's Future Response Costs.

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

81. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and 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 Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

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

82. Except as specifically provided in this Settlement Agreement, nothing herein 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

83. 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 Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

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

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

84. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in the 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. Respondents may invoke the procedures set forth in Section XV (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 Respondents shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

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

85. 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 Washington State 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.

86. This covenant 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 83 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

## **XXII. OTHER CLAIMS**

88. 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 Respondents.

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

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

## **XXIII. CONTRIBUTION PROTECTION AND RIGHTS**

91. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability to the United States for the Work and Future Response Costs.

## **XXIV. INDEMNIFICATION**

92. 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 Respondents, the Respondents’ officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorney’s fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, the Respondents’ officers, directors, employees, agents, contractors, subcontractors and any persons acting on Respondents’ behalf or under Respondents’ 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 Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

94. 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 Respondents and any person for performance of Work on or relating to the Site. In addition, 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 Respondents and any person for performance of Work on or relating to the Site.

## **XXV. INSURANCE**

95. At least thirty days prior to commencing any on-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$5,000,000, combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XXVI. FINANCIAL ASSURANCE**

96. Within sixty days of the Effective Date, Respondents shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$500,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) who has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by Respondents that Respondents meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Respondents, or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondents; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it substantially satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

97. If at any time during the effective period of this Settlement Agreement, Respondents provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 96(e) or Paragraph 96(f) above, Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Settlement Agreement, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity’s chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity’s fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section, references in 40 C.F.R. Part 264, Subpart H, to “closure,” “post-closure,” and “plugging and abandonment” shall be deemed to refer to the Work required under this Settlement Agreement, and the terms “current closure cost estimate” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” shall be deemed to refer to the Estimated Cost of the Work.

98. In the event that EPA determines at any time that a Performance Guarantee provided by Respondents pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Respondents become aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents, within thirty days of receipt of notice of EPA’s determination or, as the case may be, within thirty days of Respondents becoming aware of such information, shall obtain and present to EPA

for approval a proposal for a revised or alternative form of Performance Guarantee listed in this Section of this Settlement Agreement that satisfies all requirements set forth in this Section. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in Paragraph 100 of this Settlement Agreement. Respondents' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the terms hereof.

99. The commencement of any Work Takeover pursuant to Paragraph 84 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to this Section, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria, Respondents shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

100. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee.

If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount set forth above, Respondents may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Respondents shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in this Section. If EPA decides to accept such a proposal, EPA shall notify the petitioning Respondents of such decision in writing. After receiving EPA's written acceptance, Respondents may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondents may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in this Section of this Settlement Agreement.

b. Change of Form of Performance Guarantee.

(i) If, after the Effective Date of this Settlement Agreement, Respondents desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Respondents may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in this Section. Any decision made by EPA on a petition submitted under this subparagraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents.

(ii) Respondents shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Respondents shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Remedial Project Manager and Assistant Regional Counsel. EPA shall notify Respondents in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Respondents shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Remedial Project Manager within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee.

c. Release of Performance Guarantee. If Respondents receive written notice from EPA in accordance with Section XXXI hereof that the Work has been fully and finally completed in accordance with the terms of this Settlement Agreement, or if EPA otherwise notifies Respondents in writing, Respondents may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Respondents shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Respondents may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative decision resolving such dispute.

## **XXVII. INTEGRATION/APPENDICES**

101. This Settlement Agreement and its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the 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 SOW.

Appendix B is the map of the Site.

## **XXVIII. ADMINISTRATIVE RECORD**

102. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit documents to EPA developed during the course of the RI/FS upon which selection of the response action may be based. Upon request by EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request by EPA, Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents shall establish a community information repository at or near the Site, to house one copy of the administrative record.

## **XXIX. NOTICES AND SUBMISSIONS**

103. Whenever, under the terms of this Settlement Agreement, notice is required to be give or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified, herein shall constitute complete satisfaction of any written notice requirement of the Settlement Agreement with respect to EPA and the Respondents, respectively.

As to EPA:

Lynda Priddy  
U.S. EPA, Region 10  
1200 Sixth Avenue, ECL-111  
Seattle, WA 98101

As to Respondent, Altino Properties, Inc.:

Robert Cugini  
Altino Properties  
P.O. Box 359  
Renton, WA 98057

With a copy sent to:

Lynn Manolopoulos  
Davis Wright Tremaine LLP  
777 108<sup>th</sup> Avenue NE, Suite 2300  
Bellevue, WA 98004

As to Respondent, J.H. Baxter & Co.:

RueAnn Thomas  
Environmental Programs Director  
J.H. Baxter & Co.  
85 N. Baxter Road  
P.O. Box 10797  
Eugene, OR 97402

As to Quendall Terminals:

Robert Cugini  
Altino Properties  
P.O. Box 359  
Renton, WA 98057

And

RueAnn Thomas  
Environmental Programs Director  
J.H. Baxter & Co.  
85 N. Baxter Road  
P.O. Box 10797  
Eugene, OR 97402

With a copy sent to:

Lynn Manolopoulos  
Davis Wright Tremaine LLP  
777 108<sup>th</sup> Avenue NE, Suite 2300  
Bellevue, WA 98004

**XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

104. This Settlement Agreement shall be effective on the day it is signed by the Regional Administrator or his/her delegatee.

105. This Settlement Agreement may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

106. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve 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.

**XXXI. NOTICE OF COMPLETION OF WORK**

107. When EPA determines 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, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies, in accordance with Paragraph 37 (Modification of the SOW ). Failure by Respondents to implement the approved modified SOW shall be a violation of this Settlement Agreement.

It is so SETTLED, ORDERED AND AGREED this \_\_\_\_ day of \_\_\_\_\_, 2006.

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

Sheila M. Eckman  
Office of Environmental Cleanup  
Unit Manager, U.S. EPA Region 10

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

In the Matter of Quendall Terminals Superfund Site  
Renton, Washington

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2006.

For Respondent  
Altino Properties, Inc.

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

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

In the Matter of Quendall Terminals Superfund Site  
Renton, Washington

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2006.

For Respondent  
J.H. Baxter & Co.

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

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

In the Matter of Quendall Terminals Superfund Site  
Renton, Washington

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2006.

For Quendall Terminals  
Respondent, Altino Properties, Inc.

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

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

In the Matter of Quendall Terminals Superfund Site  
Renton, Washington

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2006.

For Quendall Terminals  
Respondent, J.H. Baxter & Co.

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