

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:
80th Avenue Tank Farm Site
Commerce City, Colorado

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Union Pacific Railroad,

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-2011-0002

Respondent

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

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 Union Pacific Railroad (Respondent). This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the 80th Avenue Tank Farm Site (Site) located at 6401 East 80th Avenue in Commerce City, Colorado.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA).

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

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

II. PARTIES BOUND

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

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

III. DEFINITIONS

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

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on November 12, 2010, by the Regional Administrator, EPA Region 8, or his delegate and amended on November 15, 2010, and all attachments thereto. The Action Memorandum is attached as Appendix A.

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

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

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXI.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "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, the costs incurred pursuant to Paragraph 26 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 36 (emergency response) and Paragraph 60 (work takeover)."

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 on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

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

m. "Parties" shall mean EPA and Respondent.

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

p. "Respondent" shall mean Union Pacific Railroad.

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

r. "Site" shall mean the 80th Avenue Tank Farm Superfund Site, an abandoned fuel storage and transfer facility located at 6401 East 80th Avenue in Commerce City, Colorado.

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

t. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under State law.

u. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

8. The Site is an abandoned fuel transfer and storage facility located at 6401 East 80th Avenue in Commerce City, Colorado. There are at least 22 vertical fuel and chemical storage tanks, two very large propane tanks at the Site, a boarded-up office building and an old warehouse on the Site.

9. On November 5, 2010, local residents contacted the South Adams County Fire Department and reported strong odors coming from the Site. Apparently vandals seeking scrap metal had entered the Site and took valves, tank flanges and piping manifolds which caused residual liquids from the tanks to be released into the environment. The Adams County Hazardous Response Authority evacuated nearby

residents, temporarily secured the leaking tanks with plastic and duct tape, and contacted EPA's National Response Center. EPA initiated an emergency response. EPA secured the tank openings with metal fittings and arranged for twenty-four hour Site security pending a more thorough Site assessment.

10. Initial sampling has revealed that the tanks contain benzene, toluene, ethylbenzene, styrene, and creosote. In addition, abandoned drums were found in the warehouse building along with trash and other debris and an evaporation pond was discovered north of the tank batteries.

11. The Respondent is the current owner of the Site.

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The 80th Avenue Tank Farm Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) as the current owner of the facility, and is jointly and severally liable for performance of response action(s) and for response costs incurred and to be incurred at the Site.

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

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

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but

not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

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

13. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within five (5) working days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least five (5) working days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within five (5) working days of EPA's disapproval.

14. Within five (5) working days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, 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, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within five (5) working days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

15. EPA has designated Mike Zimmerman of the Emergency Response Unit, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 1595 Wynkoop Street, Denver, Colorado, 80202, or electronically to zimmerman.mike@epa.gov.

16. EPA and Respondent shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA five (5) working days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

17. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum. The actions to be implemented generally include, but are not limited to, purging the chemical tanks, piping and piping manifolds and properly disposing of the contents, characterizing the waste in the abandoned drums and

properly disposing of the drums, closing the evaporation pond, collecting soil and ground water samples and, if necessary, removing contaminants, evaluating the buildings for asbestos, and, if necessary, removing the asbestos. Further remediation may be required depending on soil and groundwater sample results. As soon as practicable after the Effective Date of this Settlement Agreement, Respondent shall submit to EPA a plan for providing adequate security at the Site. Upon EPA approval of such plan, Respondent shall take over maintenance of Site security in accordance with the EPA approved plan.

18. Work Plan and Implementation.

a. Within five (5) working days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action as set forth in the Action Memorandum and generally described in Paragraph 17 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within five (5) working days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until it receives EPA's approval in accordance with Paragraph 18(b).

19. Health and Safety Plan. Within five (5) working days after the Effective Date of this Settlement Agreement, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work. The plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

20. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody

procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than five (5) working days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

21. Post-Removal Site Control. If necessary to ensure the effectiveness and integrity of the removal action after completion of on-Site removal activities, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control

22. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every thirty (30) days after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. For any conveyance of any interest in real property at the Site prior to EPA's issuance of notice of completion in accordance with Section XXIX (Notice of Completion of Work), Respondent shall, at least 30 days prior to such conveyance, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

23. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

24. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected

schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. Respondent shall provide the information required by Paragraph 24(a) and 24(b) as soon as practicable after the award of the contract for the removal action and before the Waste Material is actually shipped.

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

IX. SITE ACCESS

25. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide 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. EPA will identify its representatives and contractors to Respondent.

26. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

27. 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.

X. ACCESS TO INFORMATION

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

29. Respondent 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 they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

30. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following to the extent such information is not also subject to a claim of privilege 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 Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

XI. RECORD RETENTION

32. Until five (5) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its

possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until five (5) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

33. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following to the extent such information is not also subject to a claim of privilege: 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 subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

XII. COMPLIANCE WITH OTHER LAWS

35. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

36. 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, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC and the EPA Project Manager, in the event of their unavailability, the Regional Duty Officer, Emergency Response Unit, at (303) 293-1788 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (303) 293-1788 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

39. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 41 of this Settlement Agreement. The bill shall be directed to the individual at the addresses set forth below, unless Respondent gives notice of a change to EPA writing.

Union Pacific Railroad
c/o Gary Honeyman
221 Hodgeman
Laramie, Wyoming 82072

b. Respondent shall make all payments required by this Paragraph by wire transfer of by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 08-VK

Respondent shall send the check(s) to:

Regular Mail:

Mellon Bank
ATTN: Superfund Accounting
Lockbox 360859
Pittsburg, PA 15251-6859

Express Mail:

U.S. EPA 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

For wire transfer, payment must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA=021030004
Account=68010727
TREAS NYC/CTR/
33 Liberty Street
New York NY 10045

c. At the time of payment, Respondent shall send notice that payment has been made to by email to acctsreceivable.cinwd@epa.gov, and to:

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

d. The total amount to be paid by Respondent pursuant to Paragraph 39(a) shall be deposited by EPA in the 80th Avenue Tank Farm Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

40. In the event that the payment for Future Response Costs is not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

41. Respondent may contest payment of any Future Response Costs billed under Paragraph 39 if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 39. Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 39. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 39. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

42. 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.

43. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within thirty (30) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA's

receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

44. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

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

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within three (3) days of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

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

XVIII. STIPULATED PENALTIES

48. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 49 and 50 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). “Compliance” by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, 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.

49. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 49(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$500	15th through 30th day
\$10,000	31st day and beyond

b. Compliance Milestones

- Submission of Work Plan
- Performance of Work in accordance with Work Plan schedule
- Submission of Final Report

50. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraph 22:

\$100	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the

final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Division Director, under Paragraph 44 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Assistant Regional Administrator issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

52. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties in accordance with the notice provisions of Paragraph 82. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

53. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 08-VK, the EPA Docket Number and be submitted in accordance with the payment instructions set forth in Paragraph 39 above.

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

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

56. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section,

except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

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

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

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

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

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

XXI. COVENANT NOT TO SUE BY RESPONDENT

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

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Colorado 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 Future Response Costs.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 59 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same

response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

62. 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

63. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

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

65. 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

66.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 Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), 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 Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement

Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

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

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

69. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

70. At least ten (10) days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the

Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

71. Within 60 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$850,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

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

72. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 71, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

73. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 71 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any

other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

XXVII. MODIFICATIONS

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

76. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 75.

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

XXVIII. ADDITIONAL REMOVAL ACTION

78. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority

to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

XXIX. NOTICE OF COMPLETION OF WORK

79. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including *e.g.*, post-removal site controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXX. INTEGRATION/NOTICES

82. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. When, under the terms of this Settlement Agreement, written notice is required to be given 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 set forth below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the EPA On-Scene Coordinator:

Mike Zimmerman
U.S. Environmental Protection Agency (EPR-ER)
1595 Wynkoop Street
Denver, Colorado 80202-1129
zimmerman.mike@epa.gov

As to the Respondent:

Union Pacific Railroad
c/o Gary Honeyman
221 Hodgeman
Laramie, Wyoming 82072

XXXI. EFFECTIVE DATE

83. This Settlement Agreement shall be effective when EPA notifies Respondent that the Settlement Agreement has been signed by the Regional Administrator or his delegate.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

Agreed this 6th day of January, 2011.


For Respondent, Union Pacific Railroad

By: RM Grimaila
Robert M. Grimaila

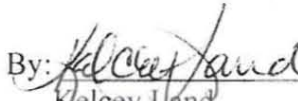
Title VP Safety, Environment, Security

It is so ORDERED and Agreed this _____ day of January, 2011.


U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: 
David Ostrander
Director, Preparedness, Assessment and
Emergency Response Program
Office of Ecosystems Protection
and Remediation

Date: 1/11/2011

By: 
Kelcey Land
Director, Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 1/7/2011

By: 
Matthew Cohn
Supervisory Attorney, Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 1/11/2011

EFFECTIVE DATE: 1/12/11

Appendix A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8EPR-SA

Date: November 15, 2010

ACTION MEMORANDUM AMENDMENT – REMOVAL ACTION CEILING INCREASE

SUBJECT: Documentation of Request for an Approval of a Removal Action Ceiling Increase for Actions Underway at the 80th Ave. Tank Farm Site in Commerce City, Adams County, Colorado.

FROM: Mike Zimmerman, On-Scene Coordinator
8EPR-PAR

THROUGH: Curtis Kimbel, Supervisor
Emergency Response Unit

TO: David Ostrander, Director
Preparedness, Assessment & Response Program

ABSTRACT

Site #:	08VK	Response Authority:	CERCLA
NPL Status:	Non-NPL	Response Type:	Classic Emergency
Incident Category:	Fund-lead	Contaminant of Concern:	Benzene, Toluene, Ethyl Benzene, Styrene, 2,3,4-Trimethyl Pentane, Hexane, Naphtha, and Methyl Cyclohexane in Storage Tanks in Residential Area
Initial Action Memo:	November 12, 2010	Start Date:	November 5, 2010
Removal Mob:	November 5, 2010	Completion Date:	TBD

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval to continuing the emergency response Removal action described herein (and in the Initial Action Memorandum dated November 12, 2010 (See Attachment 1) at the 80th Ave. Tank Farm, Commerce City, Adams County, Colorado, as well as to request a ceiling increase. The Site consists of 22 fuel storage tanks plus 2 large propane tanks left abandoned by the former operator. Additionally, a chemical evaporation pond exists on Site and several abandoned drums of unknown content within a dilapidated warehouse. Additionally,

a dilapidated office building is located on the south side of the property.

This Action Memorandum Amendment addresses the decision to continue emergency response operations described herein at the above-discussed location pursuant to CERCLA Sections 104 and 106. The response was initiated on November 5, 2010 by the OSC using his CERCLA-delegated authority and involved activities to conduct an assessment, cleanup, and dispose of various hazardous materials, including benzene, toluene, ethyl benzene, styrene, 2,3,4-trimethyl pentane, hexane, naphtha, and methyl cyclohexane that were released on Site. Additionally, ethanol is suspected as being released and vapors emanating from the Site caused a large residential evacuation of 210 homes on the evening of November 5, 2010.

Conditions existing at the Site presented an imminent and substantial endangerment to human health and the environment and met the criteria for initiating a Removal action under Section 300.415 of the National Contingency Plan (NCP). This Removal required less than 12 months and \$2 million to complete.

This Removal involved no nationally-significant or precedent-setting issues. This Removal action did not establish any precedent for how future response actions will be taken, and will not commit the United States Environmental Protection Agency (EPA) to a course of action that could have a significant impact on future responses or resources.

II. SITE CONDITIONS AND BACKGROUND

This Classis Emergency Removal action was initiated on November 5, 2010, after the Region 8 Environmental Protection Agency (EPA) received notification of the spill event thru the Phone-Duty On-Scene Coordinator (OSC). EPA was asked to assist in the response by a representative of the Tri-County Health Department that had responded to the incident and evaluated the initial assessment. Given the circumstances on Site during the evening of November 5, 2010, the South Adams County Fire District requested EPA's Removal Program to initiate a CERCLA Removal Action.

A. SITE DESCRIPTION

1. Removal Site Evaluation

On November 5, 2010 at approximately 5:30 P.M strong odors were reported coming from a tank farm consisting of 22 vertical tanks plus 2 large propane tanks near the intersection of 80th Ave. and Monaco St., Commerce City, CO. Firefighters from South Adams County Fire District and other metropolitan mutual aid fire districts began evacuating residences from the nearby community and provided shelter at a local elementary school. Approximately 210 homes were evacuated from 79th Ave. to 87th Ave, Monaco Parkway to Brighton Road, Commerce City. The NRC was notified at approximately 7:00 P.M. Afternoon temperatures were in the high 70⁰F and many of the tanks and pipe manifolds were left open and leaking by vandals seeking to gather scrap metal and other valuable appurtenances from the Site.

Accompanied by the Superfund Technical Assistance Team (START) contractor, the OSC arrived on Site at approximately 8:30 PM and found a tank farm (fuel storage/transfer facility) which had been abandoned approximately for 8 years with two dilapidated buildings, debris, and noticeable odors. Adams and Jefferson County Hazardous Response Authority, including the several participating fire departments, had mobilized many responders to the Site for purposes of stabilizing the situation. Additionally, the Colorado State Patrol, Hazardous Materials Unit, was on Site. Initial instrument reading, via Hazmat ID, indicated the presence of benzene, naphtha, gasoline, diesel, coal tar creosote, ethanol, and dicyclopentadiene, a suspected carcinogen and oxidizer. Several of the chemical compounds are suspected as being gasoline additives. The leaking tanks were temporarily secured by the firefighters with plastic and duct tape. The evacuation was lifted at approximately 9:00 P.M. A Level "C" entry was performed at 10:00 P.M. with appropriate PID/FID instrumentation plus an O₂ meter and the results indicated that the odors/air emissions dissipated when measuring within 10 ft of the tanks.

2. Physical Location

The Site is located at 6401 East 80th Ave., Commerce City, Colorado 80022-1511. (Lat / Long: 39.841763 N, -104.914482⁰W).

3. Site Characteristics

The Site is an uncontrolled abandoned fuel storage and transfer tank farm.

4. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant, or Contaminant

The contaminants of concern are benzene, toluene, ethyl benzene, styrene, 2,3,4-trimethyl, pentane, hexane, naphtha, and methyl cyclohexane as defined by CERCLA. Additionally, ethanol is suspected along with dicyclopentadiene.

5. NPL Status

This Site is not on the NPL and is not being considered for inclusion on the NPL.

B. OTHER ACTIONS TO DATE

1. Previous Actions

There have been no previous actions taken at this Site that are not otherwise discussed in this Action Memorandum.

C. STATE AND LOCAL AUTHORITIES' ROLE

1. State and Local Actions to Date

Local authorities conducted the initial entry, assessment and initiated the evacuation within Commerce City. In the beginning, the Site was under the control of the South Adams County Fire District with supplemental assistance rendered from Adams County Sheriff's Department, Adams and Jefferson County Hazardous Response Authority, Tri-County Health Department, Arvada Fire Department, West Metro Fire Department, and the Colorado State Highway Patrol. The Tri-County Health Department requested EPA's assistance. South Adams County Fire District requested EPA to take-over the Site as events unfolded on the evening of November 10, 2010.

2. Potential for Continued State/Local Response

No further Site activities are anticipated.

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

The conditions at the Site presented a threat to public health and the environment and met the criteria for initiating a Removal Action under 40 CFR §300.415(b)(2) of the National Contingency Plan.

A. Threats to Public Health or Welfare

The following factors from §300.415(b)(2) of the NCP form the basis for EPA's determination of the threat present and the appropriate action to be taken:

“(i) Actual or potential exposure by nearby populations from hazardous substances”;

The abandoned tank farm is adjacent to residential areas and is uncontrolled with residual chemicals contained within the tanks, piping and appurtenances. Access controls are very minimal for foot or vehicular traffic.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action described in this Action Memorandum, presented an imminent and substantial endangerment to public health, welfare, or the environment.

V. SELECTED REMOVAL, PROPOSED ACTIONS, AND ESTIMATED COSTS

A. Situation and Removal Activities to Date

On November 6, 2010 and prior to EPA's arrival on Saturday morning, the Adams County Sheriff's Department Mobile Crime Lab took forensic samples. Subsequently, EPA's Emergency and Rapid Response Service (ERRS) contractor mobilized for purposes of securing the tank/manifold piping opening in a more permanent manner, plus secure breaches in Site fencing and a large warehouse containing a several drums of unknown materials. The tank openings were re-secured with a better arrangement of visqueen and duct tape while the ERRS contractor attempted to locate metal fittings. Approximately 5 openings in the fence (east side) were repair to restrict access. The tanks and buildings were covered with graffiti by taggers, indicating that the Site had been uncontrolled for some time. Additionally, chemical residuals scrapped from tank secondary containment areas and were drummed for disposal. Arrangements for 24/7 security guard access were made thru the Adams County Sheriff's Department.

On November 9, 2010 the ERRS contractor returned to replace temporary tank/pipe covers with metal fittings. Additionally, ERRS boarded up the unrestricted warehouse to prevent future access and continued security guard services.

B. PROPOSED ACTIONS

1. Proposed Action Description

The OSC, with the ERRS contractor will continue to maintain 24/7 Site security and the START contractor will continue to provide analytical support in evaluating the Site characteristics.

Next Steps

- Residual chemicals will be sampled and purged from the 22 tanks, piping, and, piping manifolds and properly disposed.
- The propane tanks will be checked for remaining fuel balances and rendered safe.
- The two dilapidated buildings on the property shall be examined for asbestos and, if present, removed.
- The drums of unknown materials within the buildings shall be properly disposed and the drums of residual contamination collected by the ERRS contractor will be disposed of according to appropriate waste stream.
- The chemical evaporation pond located north of the tank batteries shall be properly closed and appropriate soil and groundwater samples collected and analyzed for contaminants. Further remediation may be required depending on soil and groundwater sample results.

2. Engineering Evaluation/Cost Analysis (EE/CA)

An EE/CA is not required for a Classic Emergency Removal action.

3. Applicable or Relevant and Appropriate Requirements (ARARs)

Given the nature of this Classic Emergency response, all Federal and state ARARs were not initially identified at the time the response was initiated. Removal actions conducted under CERCLA are required to attain ARARs to the extent practicable. In determining whether compliance with ARARs is practicable, the OSC may consider appropriate factors, including the urgency of the situation and the scope of the removal action to be conducted. The action will comply with all DOT and RCRA requirements for characterization, transportation and disposal of hazardous wastes.

4. Project Schedule

The Response was initiated on November 5, 2010. The Site has been stabilized and secured pending additional response activities to address ongoing releases and threatened releases of hazardous substances at the Site.

B. ESTIMATED COSTS TO DATE

Extramural Regional Allowance Costs:

	<u>Initial Ceiling</u>	<u>Requested Ceiling Increase</u>	<u>Total Budget Ceiling</u>
Total Cleanup Contractor Costs	\$ 50,000	\$775,000	\$825,000
START	\$ 40,000	\$175,000	\$215,000
Extramural Cost Contingency – 20%	<u>\$ 18,000</u>	<u>\$190,000</u>	<u>\$208,000</u>
TOTAL, Amended Extramural Costs	\$108,000	\$1,140,000	\$1,248,000

Amended Removal Project Ceiling: \$1,248,000

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

Delayed action would have increased the threat to public health and the environment.

VII. OUTSTANDING POLICY ISSUES

None

VIII. ENFORCEMENT

Potential enforcement actions are being reviewed by EPA Region 8. The total amended EPA costs for this Removal Action, based on full-cost accounting practices eligible for cost recovery are estimated to be:


Amended Total Removal Project Ceiling	\$1,248,000
Intramural Direct Costs	\$ 173,333
Indirect Costs (35%*)	<u>\$ 497,467</u>
Total Estimated EPA Costs for the Removal Action	\$1,918,800

*The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$1,918,800 (direct costs include direct extramural costs and direct intramural costs - indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2005). These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

IX. RECOMMENDATIONS

This decision document represents the selected Removal action for the 80th Ave. Tank Farm, Commerce City, Colorado. The selected Removal Action was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP.

Conditions at the Site met the NCP section 300.415 (b) (2) criteria for a removal, and the action was taken pursuant to my OSC response authority. The total project ceiling will be \$1,918,800. Of this amount, an estimated \$1,248,000 comes from the FY 2011 Regional Removal allowance.

Approved: 
David A. Ostrander, Program Director
Preparedness, Assessment and Response

Date: 11/19/10

Disapproved: _____
David A. Ostrander, Program Director
Preparedness, Assessment and Response

Date: _____

Attachments:

- Attachment 1 - Action Memorandum, November 12, 2010
- Attachment 2 - Aerial photo of the property



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 1595 Wynkoop STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8EPR-SA

Date: November 12, 2010

ACTION MEMORANDUM

SUBJECT: Documentation of Approval for a Removal Action at the 80th Ave. Tank Farm Site in Commerce City, Adams County, Colorado.

TO: Site File

FROM: Mike Zimmerman, On-Scene Coordinator
 8EPR-PAR

THROUGH: Curtis Kimbel, Supervisor
 Emergency Response Unit

David Ostrander, Director
 Preparedness, Assessment & Response Program

ABSTRACT

Site #:	08VK	Response Authority:	CERCLA
NPL Status:	Non NPL	Incident Category:	Fund-lead
Contaminant of Concern:	Benzene/Toluene	Response Type:	Classic Emergency
Start Date:	11/05/10	Completion Date:	TBD

I. PURPOSE

The purpose of this Action Memorandum is to document my approval of the Removal action described herein for the 80th Ave. Tank Farm Site (Site) in Commerce City, Adams County, Colorado.

This Removal, which was initiated under my On-Scene Coordinator's (OSC) CERCLA authority to initiate an emergency response action of less than \$250,000, involved the response to conduct an assessment, cleanup, and dispose of various hazardous materials, including benzene, toluene, ethyl benzene, styrene, 2,3,4-trimethyl pentane, hexane, naphtha, and methyl cyclohexane that were released on Site. Additionally, ethanol is suspected as being released and vapors emanating from the Site caused a large residential evacuation of 210 homes on the evening of November 5, 2010.

Conditions existing at the Site presented an imminent and substantial endangerment to human health and the environment and met the criteria for initiating a Removal action under Section 300.415 of the National Contingency Plan (NCP). This Removal required less than 12 months and \$2 million to complete.

This Removal involved no nationally-significant or precedent-setting issues. This Removal action did not establish any precedent for how future response actions will be taken, and will not commit the United States Environmental Protection Agency (EPA) to a course of action that could have a significant impact on future responses or resources.

II. SITE CONDITIONS AND BACKGROUND

This Classis Emergency Removal action was initiated on November 5, 2010, after the Region 8 Environmental Protection Agency (EPA) received notification of the spill event thru the Phone-Duty On-Scene Coordinator (OSC). EPA was asked to assist in the response by a representative of the Tri-County Health Department that had responded to the incident and evaluated the initial assessment. Given the circumstances on Site during the evening of November 5, 2010, the South Adams County Fire District requested EPA's Removal Program to initiate a CERCLA Removal Action.

A. SITE DESCRIPTION

1. Removal Site Evaluation

On November 5, 2010 at approximately 5:30 P.M strong odors were reported coming from a tank farm consisting of 22 vertical tanks plus 2 large propane tanks near the intersection of 80th Ave. and Monaco St., Commerce City, CO. Firefighters from South Adams County Fire District and other metropolitan mutual aid fire districts began evacuating residences from the nearby community and provided shelter at a local elementary school. Approximately 210 homes were evacuated from 79th Ave. to 87th Ave, Monaco Parkway to Brighton Road, Commerce City. The NRC was notified at approximately 7:00 P.M. Afternoon temperatures were in the high 70⁰F and many of the tanks and pipe manifolds were left open and leaking by vandals seeking to gather scrap metal and other valuable appurtenances from the Site.

Accompanied by the Superfund Technical Assistance Team (START) contractor, the OSC arrived on Site at approximately 8:30 PM and found a tank farm (fuel storage/transfer facility) which had been abandoned approximately for 8 years with two dilapidated buildings, debris, and noticeable odors. Adams and Jefferson County Hazardous Response Authority, including the several participating fire departments, had mobilized many responders to the Site for purposes of stabilizing the situation. Additionally, the Colorado State Patrol, Hazardous Materials Unit, was on Site. Initial instrument reading, via Hazmat ID, indicated the presence of benzene, naphtha, gasoline, diesel, coal tar creosote, ethanol, and dicyclopentadiene, a suspected carcinogen and oxidizer. Several of the chemical compounds are suspected as being gasoline additives. The leaking tanks were temporarily secured by the firefighters with plastic and duct tape. The

evacuation was lifted at approximately 9:00 P.M. A Level "C" entry was performed at 10:00 P.M. with appropriate PID/FID instrumentation plus an O₂ meter and the results indicated that the odors/air emissions dissipated when measuring within 10 ft of the tanks.

2. Physical Location

The Site is located at 6401 East 80th Ave., Commerce City, Colorado 80022-1511. (Lat / Long: 39.841763 N, -104.914482⁰W).

3. Site Characteristics

The Site is an uncontrolled abandoned fuel storage and transfer tank farm.

4. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant, or Contaminant

The contaminants of concern are benzene, toluene, ethyl benzene, styrene, 2,3,4-trimethyl, pentane, hexane, naphtha, and methyl cyclohexane as defined by CERCLA. Additionally, ethanol is suspected along with dicyclopentadiene.

5. NPL Status

This Site is not on the NPL and is not being considered for inclusion on the NPL.

B. OTHER ACTIONS TO DATE

1. Previous Actions

There have been no previous actions taken at this Site that are not otherwise discussed in this Action Memorandum.

C. STATE AND LOCAL AUTHORITIES' ROLE

1. State and Local Actions to Date

Local authorities conducted the initial entry, assessment and initiated the evacuation within Commerce City. In the beginning, the Site was under the control of the South Adams County Fire District with supplemental assistance rendered from Adams County Sheriff's Department, Adams and Jefferson County Hazardous Response Authority, Tri-County Health Department, Arvada Fire Department, West Metro Fire Department, and the Colorado State Highway Patrol. The Tri-County Health Department requested EPA's assistance. South Adams County Fire District requested EPA to take-over the Site as events unfolded on the evening of November 10, 2010.

2. Potential for Continued State/Local Response

No further Site activities are anticipated.

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

The conditions at the Site presented a threat to public health and the environment and met the criteria for initiating a Removal Action under 40 CFR §300.415(b)(2) of the National Contingency Plan.

A. Threats to Public Health or Welfare

The following factors from §300.415(b)(2) of the NCP form the basis for EPA's determination of the threat present and the appropriate action to be taken:

“(i) Actual or potential exposure by nearby populations from hazardous substances”;

The abandoned tank farm is adjacent to residential areas and is uncontrolled with residual chemicals contained within the tanks, piping and appurtenances. Access controls are very minimal for foot or vehicular traffic.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action described in this Action Memorandum, presented an imminent and substantial endangerment to public health, welfare, or the environment.

V. SELECTED REMOVAL, PROPOSED ACTIONS, AND ESTIMATED COSTS

A. Situation and Removal Activities to Date

On November 6, 2010 and prior to EPA's arrival on Saturday morning, the Adams County Sheriff's Department Mobile Crime Lab took forensic samples. Subsequently, EPA's Emergency and Rapid Response Service (ERRS) contractor mobilized for purposes of securing the tank/manifold piping opening in a more permanent manner, plus secure breaches in Site fencing and a large warehouse containing a several drums of unknown materials. The tank openings were re-secured with a better arrangement of visqueen and duct tape while the ERRS contractor attempted to locate metal fittings. Approximately 5 openings in the fence (east side) were repaired to restrict access. The tanks and buildings were covered with graffiti by taggers, indicating that the Site had been uncontrolled for some time. Additionally, chemical residuals

scrapped from tank secondary containment areas were drummed for disposal. Arrangements for 24/7 security guard access were made thru the Adams County Sheriff's Department.

On November 9, 2010 the ERRS contractor returned to replace temporary tank/pipe covers with metal fittings. Additionally, ERRS boarded up the unrestricted warehouse to prevent future access and continued security guard services.

B. PROPOSED ACTIONS

1. Proposed Action Description

It is anticipated that residual chemicals will be purge from the 22 tanks, piping, and piping manifolds and properly disposed. The propane tanks will be checked for remaining fuel balances and rendered safe. Additionally, the two dilapidated buildings shall be examined for asbestos and, if present, removed. The drums of unknown materials within the buildings shall be properly disposed. Drums of residual contamination collected by the ERRS contractor will be disposed of according to appropriate waste stream. The evaporation pond located north of the tank batteries shall be properly closed and appropriate soil and groundwater samples collected and analyzed for contaminants. Further remediation may be required depending on soil and groundwater sample results. This Action Memorandum will be amended to document these additional activities upon completion of the removal site investigation.

2. Engineering Evaluation/Cost Analysis (EE/CA)

An EE/CA is not required for a Classic Emergency Removal action.

3. Applicable or Relevant and Appropriate Requirements (ARARs)

Because this was a Classic Emergency response to an unplanned event, all Federal and State ARARs were not identified before the Removal was initiated. Accordingly, the OSC worked closely with local responders and health agencies on various aspects of the response so as to promptly identify and address their concerns regarding human health, contamination mitigation, and waste disposal issues. However, a liquid sample taken from a leaking pipe manifold on November 10, 2010 and hazcatted (field test) indicated substances that are easily ignitable. Laboratory analysis to determine the flash point and other Resource Conservation Recovery Act (RCRA) characteristics is underway at this time.

4. Project Schedule

This Classic Emergency Response was initiated on November 5, 2010. The Site has been stabilized and secured pending additional response activities to address ongoing releases and threatened releases of hazardous substances at the Site.

B. ESTIMATED COSTS TO DATE

Extramural Regional Allowance Costs:

Total Cleanup Contractor Costs	\$ 50,000
START	\$ 40,000
Extramural Cost Contingency	<u>\$ 18,000</u>
TOTAL, Extramural Costs	\$108,000
Removal Project Ceiling:	\$108,000

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

Delayed action would have increased the threat to public health and the environment.

VII. OUTSTANDING POLICY ISSUES

None

VIII. ENFORCEMENT

Potential enforcement actions are being reviewed by EPA Region 8. The total EPA costs for this Removal Action, based on full-cost accounting practices eligible for cost recovery are estimated to be:

Total Removal Project Ceiling	\$108,000
Intramural Direct Costs	\$ 15,000
Indirect Costs (35%*)	<u>\$ 43,050</u>
Total Estimated EPA Costs for the Removal Action	\$166,050

*The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$166,050 (direct costs include direct extramural costs and direct intramural costs - indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2005). These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

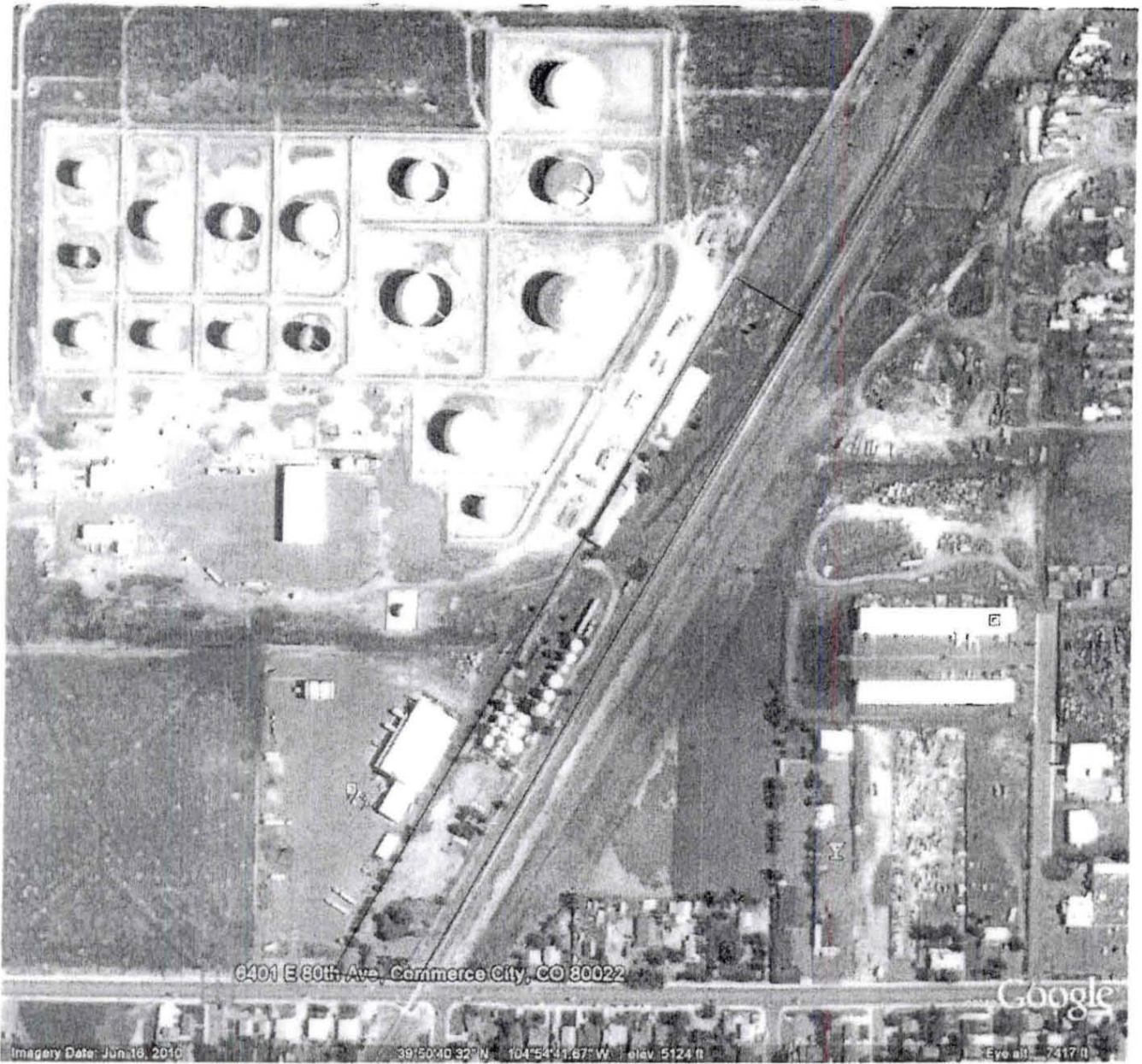
IX. RECOMMENDATIONS

This decision document represents the selected Removal action for the 80th Ave. Tank Farm, Commerce City, Colorado. The selected Removal Action was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP.

Conditions at the Site met the NCP section 300.415 (b) (2) criteria for a removal, and the action was taken pursuant to my OSC response authority. The total project ceiling will be \$166,050. Of this amount, an estimated \$108,000 comes from the Regional removal allowance.

Mike Zimmerman
On-Scene Coordinator

November 12, 2010
Date



6401 E 80th Ave, Commerce City, CO 80022

Google

Imagery Date: Jun 18, 2010 39°50'40.92" N 104°54'41.67" W elev. 5124 ft Eye alt. 7417 ft