

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

In the Matter of:)

Lexington Former Manufactured)
Gas Plant #2 Site)
Lexington, Missouri)

KCP&L Greater Missouri Operations)
Company)

Respondent.)

Docket No. CERCLA-07-2009-0018)

Proceedings under Sections 104, 107 and)
122 of the Comprehensive Environmental)
Response, Compensation, and Liability)
Act of 1980 (42 U.S.C. §§ 9604, 9607)
and 9622).)

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

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I. INTRODUCTION

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into by the United States Environmental Protection Agency ("EPA") and KCP&L Greater Missouri Operations Company ("Respondent" or "KCP&L GMO"). This Settlement Agreement provides for the performance of a removal action pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, at the Lexington Former Manufactured Gas Plant #2 Site (the "Site"), which is located in the City of Lexington, Lafayette County, Missouri.

2. This Settlement Agreement also provides for the reimbursement of response costs not inconsistent with the NCP incurred by EPA in connection with the Site as provided by Section XVII (Reimbursement of Costs) of this Settlement Agreement.

II. JURISDICTION

3. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Settlement Agreement 12580, 52 Fed. Reg. 2926 (1987), and was further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority was subsequently delegated to the Director of the Superfund Division, EPA, Region VII, by EPA, Region VII Delegation No. R7-14-14C, dated January 1, 1995.

4. Respondent's participation in this Settlement Agreement shall not constitute or be construed as an admission of liability or of the findings of fact or conclusions of law and determinations contained in this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement. Respondent consents to and agrees not to contest EPA's authority or jurisdiction to issue or to enforce this Settlement Agreement. Respondent further agrees not to contest the basis or validity of this Settlement Agreement, or any of its terms, in any proceeding brought by the United States to enforce this Settlement Agreement.

5. EPA has notified the State of Missouri of the issuance of this Settlement Agreement.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in the documents attached to this Settlement Agreement or incorporated by reference into this Settlement Agreement, the following definitions shall apply:

a. "Action Memorandum" shall mean the removal action decision document for the Site issued by EPA, Region VII, as set forth in Attachment 1 to this Settlement Agreement.

b. "Day" shall mean a calendar day unless expressly stated to be a "working day". "Working day" shall mean any day other than a Saturday, Sunday, or Federal holiday. 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 end of the next Working day.

c. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with this Settlement Agreement between January 1, 2009, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

d. "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 et seq., as amended.

e. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all attachments hereto. In the event of conflict between this Settlement Agreement and any provision of any previous agreement, order or writing, the terms and conditions of this Settlement Agreement shall control.

f. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA in connection with this Settlement Agreement, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs; contractor costs; interagency agreement costs; compliance monitoring, including the collection and analysis of split samples, site visits, discussions regarding disputes that may arise as a result of this Settlement Agreement, review and approval or disapproval of reports; and other costs incurred in implementing or overseeing this Settlement Agreement. Oversight Costs include those costs described in this paragraph that are not inconsistent with the NCP incurred by EPA in connection with this Settlement Agreement on or after the date this

Settlement Agreement is filed and file-stamped by the Regional Hearing Clerk after signature by the Parties. Oversight costs shall also include all Interim Response Costs not inconsistent with the NCP.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral, a letter of the alphabet or a lower case Roman numeral.

h. "Parties" shall mean the United States of America and the Respondent.

i. "Past Response Costs" shall mean all direct and indirect costs paid by the United States in connection with this Site prior to May 23, 2000.

j. "Post-Removal Site Control" shall mean all measures and actions necessary to ensure the continued effectiveness and integrity of the removal action following completion of construction of the removal action.

k. "RCRA" shall mean the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, 42 U.S.C. § 6901 et seq.

l. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral and includes one or more paragraphs, unless used to refer to a statutory or regulatory section.

m. "Site" shall mean the Lexington Former Manufactured Gas Plant #2 Site, which is located on the northeast and southwest corners of the intersection at 10th Street and Highland Avenue in Lexington, Missouri. The legal description for the Site is Northeast and Southwest of 10th Street and Highland Avenue Intersection, lots 1-6, 8-10, Block L, and lots 1, 2 and 3 in Block E, Anderson's Addition.

n. "Statement of Work" or "SOW" shall mean the statement describing the work to be implemented at the Site, as set forth in Attachment 2 to this Settlement Agreement, and any and all substitutions, modifications or revisions made to such document, in accordance with this Settlement Agreement.

o. "Submission" shall mean any plan, report or other item required to be submitted to EPA for review and approval under the terms of this Settlement Agreement.

p. "United States" shall mean the United States of America, and any and all agencies and instrumentalities thereof.

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

IV. STATEMENT OF PURPOSE

7. This Settlement Agreement requires the Respondent to perform a removal action, consistent with the NCP, EPA's "Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA" (EPA/540-R-93-057, August, 1993), and the guidance listed in Attachment 3 to this Settlement Agreement. The scope of the removal action to be performed by Respondent is set forth in Section VIII (Work to be Performed) of this Settlement Agreement, the Statement of Work, incorporated herein as Attachment 2 to this Settlement Agreement, and the Action Memorandum, incorporated herein as Attachment 1 to this Settlement Agreement.

8. This Settlement Agreement also provides for reimbursement of costs incurred by EPA in connection with the Site.

V. EPA'S FINDINGS OF FACT

EPA makes the following Findings of Fact (contained in Paragraphs 9-24), which Respondent neither admits nor denies:

9. The Site is located on the northeast and southwest corners of the intersection at 10th Street and Highland Avenue in Lexington, Missouri. The legal description for the Site is Northeast and Southwest of 10th Street and Highland Avenue Intersection, lots 1-6, 8-10, Block L, and lots 1, 2 and 3 in Block E, Anderson's Addition.

10. The Site is on approximately 1.25 acres in the northwest part of the City of Lexington, Missouri, in a mixed use area. Tenth Street bisects the Site into two parcels. The northeast and southwest parcels are both vacant. The land on the northeast parcel slopes east from 10th Street down to a ravine.

11. The ravine area on the northeast portion of the Site is densely wooded with intermittent running water. This ravine empties into a larger creek which drains to the Missouri River. The Site is located approximately ½ of a mile from the Missouri River.

12. The population of Lexington is approximately 4,453. The population within a one mile radius of the Site is approximately 2,711. Approximately 307 houses and three apartment buildings are located within a 2 mile radius of the Site.

13. A manufactured gas plant operated at the Site from approximately 1887 to 1924. Production at the plant ranged from 4 million cubic feet in 1900 to 14.6 million cubic feet in 1922. Substances that may be present on-site include those typically associated with manufactured gas plants, such as polynuclear aromatic hydrocarbon ("PAH") constituents.

14. Respondent KCP&L GMO is a corporation organized under the laws of the State of Delaware. KCP&L GMO previously was known as UtiliCorp United Inc. On March 15, 2002,

Utilicorp United Inc. changed its name to Aquila, Inc. and further changed its name to Greater Missouri Operations Company on October 17, 2008. KCP&L GMO is a successor to Missouri Gas & Electric, a former operator of the facility, and is the current owner of the Site.

15. KCP&L GMO conducted a Removal Site Evaluation ("RSE") in two phases pursuant to an Administrative Order on Consent with EPA signed May 23, 2000, Docket No. CERCLA-7-2000-0020. The purpose of the RSE was to determine the nature and extent of manufactured gas plant residuals, identify possible receptors at the Site, and to collect data to evaluate whether residuals pose a threat to public health, welfare, or the environment. The RSE was also intended to gather information to determine if a removal action was appropriate and to provide information for remedy selection.

16. KCP&L GMO completed Phase I RSE field activities in April 2001. Phase II RSE field activities took place from December 2001 to February 2002. The RSE included sediment, soil, and water sampling, and evaluation of the bedrock conditions. The results of both phases of the RSE are summarized in the document entitled Removal Site Evaluation Report for the Former Manufactured Gas Plant, 10th Street and Highland Avenue Lexington, Missouri, dated April 2002.

17. During the RSE, suspected clinker and coal were observed in the surface and subsurface soil on both the southwest and northeast parcels of the Site. Solidified gas plant residual was observed in two samples collected from the northeast parcel. Viscous gas plant residual was observed in four subsurface soil samples and one core location collected from the northeast parcel. The majority of the gas plant impacts are near the location of the former process units on the northeastern parcel of the Site in the subsurface soil.

18. Chemical constituents detected in site soils during the RSE include several PAH compounds such as naphthalene, pyrene, benzo(k)fluoranthene, and benzo(a)pyrene, along with arsenic. Surface soil samples showed elevated levels of PAH compounds. The highest total PAH level in the surface soil on the northeast parcel was 444.5 mg/kg. The highest total PAH level in the surface soil on the southwest parcel was 6.7 mg/kg.

19. Gas plant-related contaminants were also found in subsurface soils at elevated levels. The total PAH levels on the southwest parcel were as high as 2.9 mg/kg at a depth of six to seven feet below ground surface. The total PAH levels on the northeast parcel were as high as 967.8 mg/kg at a depth of fifteen to seventeen feet below ground surface.

20. PAH compounds can be toxic to humans and animals via oral, dermal and respiratory routes of exposure. Some PAH compounds are confirmed human carcinogens and others are suspected human carcinogens. PAHs can produce a variety of non-cancer effects with chronic exposure, such as photosensitivity and irritation of the eyes, coughing, bronchitis, leukoplakia, erythema, dermal burns, acneiform lesions, hepatotoxicity, and hematuria.

21. Elevated levels of lead were detected in both the surface and subsurface soils at the Site. Lead levels in the surface soil ranged as high as 1,300 mg/kg. Lead levels in the subsurface soils ranged as high as 1,290 mg/kg.

22. Exposure to lead can increase the risk of future adverse health effects such as damage to the central nervous system, peripheral nervous system, and kidney and blood disorders.

23. Benzene, toluene, ethyl benzene, and xylene ("BTEX") were found at the Site. Total BTEX compounds were detected in the subsurface soil as high as 89.2 mg/kg on the northeast parcel at a depth of nine to ten feet below ground surface.

24. KCP&L GMO conducted an Engineering Evaluation and Cost Analysis ("EE/CA") for the Site which was approved by EPA. Based upon the EE/CA, after opportunity for public comment, EPA issued an Action Memorandum documenting EPA's selection of the removal action for the Site, a copy of which is attached as Attachment 1 to this Settlement Agreement.

VI. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

EPA makes the following conclusions of law and determinations (contained in paragraphs 25-32), which Respondent neither admits nor denies:

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

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

27. The conditions at the Site constitute an actual or threatened release of hazardous substances into the environment at the Site, as defined in Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

28. Respondent is a "person" as defined by, and within the meaning of, Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a).

29. Respondent is a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

30. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP, 40 C.F.R.

Part 300. These factors include the following:

a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances, pollutants or contaminants – The existence of nearby residential areas, unrestricted access to soils containing high levels of PAHs, VOCs and lead, and the potential off-site transport of contaminants via water erosion presents the threat of exposure of nearby human populations, animals or the food chain to hazardous substances at the Site.

b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate – High levels of PAHs, VOCs and lead exist in surface soils at the Site. There is the potential for water erosion of those soils and migration of contaminants off-site.

c. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released – Wind and rain events may result in the migration of contaminants in surface soil at the Site.

31. The actual and threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C.

§ 9606(a).

32. The response actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and are consistent with NCP and CERCLA.

VII. PARTIES BOUND

33. The terms of this Settlement Agreement shall apply to and be binding upon Respondent, its successors and assigns. The signatories to this Settlement Agreement certify that they are authorized to execute and legally bind the parties they represent to this Settlement Agreement.

34. No change in the ownership, corporate or partnership status of Respondent, or of the Site, shall alter the responsibilities of Respondent under this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement. Respondent shall ensure that its contractors, subcontractors, laboratories, consultants, and employees acting in behalf of Respondent with regard to this Settlement Agreement receive a copy of, and comply with, this Settlement Agreement.

VIII. WORK TO BE PERFORMED

35. Respondent is hereby ordered to conduct a removal action in accordance with EPA's "Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA," OSWER Directive No. 9360.0-32, August 1993, the guidance listed in Attachment 3, this Settlement Agreement, the Statement of Work ("SOW"), and the Action Memorandum.

36. a. Designation of Contractor. All activities performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Respondent shall notify EPA in writing within ninety (90) days of the Effective Date of this Settlement Agreement, and before the Work required by this Settlement Agreement begins, of the names, titles, and qualifications of the contractor to be used to develop the Removal Action Work Plan. Any other contractors and laboratories to be used to carry out this Work and the person(s)

retained to supervise this Work shall be identified no later than thirty (30) days prior to implementation of the Removal Action Work Plan. The qualifications of all contractors and laboratories shall be subject to EPA review and approval. EPA will provide a notice of disapproval of any person or laboratory identified by Respondent, or provide an authorization to proceed. If EPA disapproves in writing of the qualifications of such firm or person(s), Respondent shall notify EPA of the identity and qualifications of a replacement within thirty (30) days of receipt of EPA's written notice. EPA will thereafter provide a notice of disapproval or an authorization to proceed. If EPA subsequently disapproves of the replacement, it will so notify Respondent in writing. EPA shall not unreasonably disapprove of any contractor, person or laboratory proposed by Respondent.

b. Designation of Project Coordinator. Respondent has designated Robert Beck, Kansas City Power & Light Environmental Services as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement.

c. Designation of On-Scene Coordinator. EPA has designated Don Lininger of the Emergency Response and Removal Branch, EPA Region 7, 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 as set forth in Paragraph 51.

37. Removal Action. KCP&L GMO shall conduct a removal action at the Site by performing the Work as detailed in an EPA-approved Removal Action Work Plan ("RAWP"). Within ninety (90) days after receipt of EPA's authorization to proceed with the contractor identified by the Respondent to develop the RAWP, Respondent shall submit to EPA for review

and approval a RAWP which shall be written in accordance with this Settlement Agreement, the SOW, and the Action Memorandum. The EPA-approved RAWP shall be incorporated in its entirety herein and shall be enforceable as a part of this Settlement Agreement.

38. Contents of the RAWP. The RAWP shall describe in detail the tasks and submissions Respondent will complete during the removal action and shall include a schedule for completing such tasks and submissions. The RAWP shall include the following:

a. Description of Removal Work. A detailed description of the removal work to be performed including, but not limited to, a schedule for all removal activities to be performed; plans for any additional investigations which may be deemed necessary to design and perform the removal action set forth in EPA's Action Memorandum; and, plans for soil sampling, excavation, treatment/disposal, and air monitoring for particulates during excavation. The RAWP shall describe the sample collection, analysis and quality assurance/quality control methods to be used in any investigations, including sampling to demonstrate that the remediation goals have been achieved. Analytical results of the sampling shall be submitted to EPA within twenty-one (21) days of data validation of sampling results by Respondent.

b. Quality Assurance Project Plan ("QAPP"). Respondent shall include as part of the RAWP a Quality Assurance Project Plan ("QAPP") for all sampling and monitoring activities to be undertaken pursuant to this Settlement Agreement and the SOW. The QAPP shall be subject to EPA approval in accordance with Section X (Submissions Requiring EPA Approval) of this Settlement Agreement. All sampling and analyses performed pursuant to this Settlement Agreement and the SOW shall

conform to EPA direction, approval, and guidance regarding sampling, quality assurance/ quality control ("QA/QC"), data validation, and chain of custody procedures in accordance with the appropriate EPA guidance described in the attached SOW.

i. Upon request by EPA, Respondent shall have the laboratory used to perform analyses under this Settlement Agreement analyze samples submitted by EPA for quality assurance monitoring.

ii. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondent while performing Work pursuant to this Settlement Agreement. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

iii. Respondent shall ensure that the laboratory used to perform analyses under this Settlement Agreement participates in a QA/QC program that complies with EPA guidance.

iv. Respondent shall include in its contracts with all laboratories and personnel utilized for sample collection and analysis and other field work relating to performance of the Work a provision allowing EPA representatives access to such laboratories and personnel for auditing purposes.

c. Implementation Schedule. A detailed schedule for implementation and completion of all removal activities.

39. Health and Safety Plan. Within ninety (90) days after receipt of EPA's authorization to proceed with the contractor identified by the Respondent to develop the RAWP, Respondent shall submit a Health and Safety Plan to EPA for review and comment. The plan shall be developed in accordance with applicable Occupational Health and Safety requirements for the Work to be performed under this Settlement Agreement and the SOW.

40. Implementation. Upon approval of the RAWP, Respondent shall implement the EPA-approved RAWP in accordance with the schedule in the approved RAWP. Respondent shall not commence clean-up work at the Site until receiving written notice from EPA stating that EPA authorizes the commencement of Work by Respondent. Respondent shall notify EPA not less than ten (10) days in advance of any field activity.

41. Progress Reports. Beginning with the first full month following the date of receipt of EPA's approval of the RAWP and continuing until Respondent has submitted its Removal Completion Report, Respondent shall provide to EPA monthly written progress reports by the 15th day of the following month. The Parties may lengthen the intervals for progress reports by mutual agreement pursuant to Section XXVI (Modifications) of this Settlement Agreement.

These progress reports shall:

a. describe the actions which have been taken to comply with this Settlement Agreement during that month;

b. describe work planned for the next two (2) months with schedules relating such work to the overall project schedule for work completion under this Settlement Agreement; and

c. describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

42. Removal Completion Report. Within thirty (30) days after completion of all Work required by the EPA-approved RAWP, Respondent shall submit to EPA for review and approval a Removal Completion Report summarizing the field activities and the results of those activities. The Removal Completion Report shall include, but not be limited to, the following:

- a. A description of the Site, including site location, a facility description including past and present facility operations, existing structures, surrounding land use, site physiography, including topography, geology and hydrogeology;
- b. A description of the Work performed, including a summary of all site work performed including all removal activities, any investigative activities, all laboratory analysis reports, a summary of all analytical data associated with the investigation including quality control data, and a sample results table covering all sampling;
- c. A description of the nature and extent of contamination addressed during removal activities;
- d. Copies of all manifests reflecting off-Site shipment of hazardous substances except samples; and
- e. Copies of any photographs taken during the removal action.

Within thirty (30) days of receipt of any EPA comments on the Removal Completion Report, Respondent shall amend the report, if necessary, to address EPA's comments and resubmit the

report to EPA in accordance with Section X (Submissions Requiring EPA Approval) of this Settlement Agreement.

IX. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. If any incident, or change in site conditions, during the pendency of this Settlement Agreement causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action, in accordance with all applicable provisions of CERCLA, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050 ("EPCRA") and the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release.

44. If there occurs any release of a hazardous substance at or from the Site in a quantity requiring notification under CERCLA and/or EPCRA, Respondent shall immediately notify EPA's Project Coordinator and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release.

X. SUBMISSIONS REQUIRING EPA APPROVAL

45. After review of any Submission required under this Settlement Agreement, EPA shall: (a) approve, in whole or in part, the Submission; (b) approve the Submission upon specified conditions; (c) disapprove, in whole or in part, the Submission, with a written

statement providing the basis for disapproval and notice to Respondent to modify the Submission; or (d) any combination of the above.

46. Upon EPA approval or approval upon specified conditions, Respondent shall proceed to take any action required by the Submission.

47. Upon receipt of a notice of EPA disapproval, Respondent shall within thirty (30) days (or such additional time as specified by EPA in such notice) resubmit the Submission for approval addressing EPA's comments. If a resubmitted Submission, or portion thereof, is disapproved by EPA, EPA shall provide written notice of such disapproval and the basis therefor. EPA retains the right to amend or develop any Submission required under this Settlement Agreement. Respondent shall implement any such Submission as amended or developed by EPA. Any decisions by EPA pursuant to this section are subject to the procedures for resolution of disputes set forth in Section XVIII (Dispute Resolution) of this Settlement Agreement.

48. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of a Submission. Implementation of any non-deficient portion of a Submission shall not necessarily relieve Respondent of any liability for stipulated penalties under this Settlement Agreement.

49. If upon resubmission, a Submission is disapproved or modified by EPA, Respondent may be deemed to have failed to timely and adequately submit such Submission, unless Respondent invokes the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XX (Stipulated Penalties) of this Settlement Agreement

shall govern the implementation of the Work required under this Settlement Agreement, and accrual and payment of any stipulated penalties during dispute resolution. If EPA's disapproval or modification is upheld, pursuant to Section XX (Stipulated Penalties) of this Settlement Agreement, stipulated penalties for violations based upon timeliness may be assessed from the date upon which the Submission was originally due. For violations based upon adequacy of a Submission, stipulated penalties may be assessed from the date upon which the Submission was due to be resubmitted.

50. All Submissions required under this Settlement Agreement shall, upon approval or modification by EPA, be enforceable under this Settlement Agreement. If EPA approves or modifies a portion of a Submission required under this Settlement Agreement, the approved or modified portion shall be enforceable under this Settlement Agreement.

XI. PROJECT COORDINATOR AND ON-SCENE COORDINATOR

51. All Submissions, including reports, EPA approvals or disapprovals, and other correspondence required under this Settlement Agreement shall either be hand-delivered or sent by electronic mail, or such other method as mutually agreed by the OSC and Project Coordinator, to the following individuals or such other individuals as Respondent or EPA may designate in writing. Two (2) copies of all Submissions to EPA shall be sent to EPA's On-Scene Coordinator:

Susan Fisher
Superfund Division
U.S. Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, Kansas 66101
Telephone (913) 551-7919
e-mail: fisher.susan@epa.gov

Submissions to Respondent are to be sent to Respondent's Project Coordinator:

Robert Beck
Kansas City Power & Light
Environmental Services
P.O. Box 418679
Kansas City, MO 64141-9679
Telephone (816) 654-1767
e-mail: bob.beck@kcpl.com

One copy of Submissions to EPA shall be sent to:

Robert Hinkson
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, Missouri 65102
e-mail: Robert.hinkson@dnr.mo.gov

52. To the maximum extent possible, communications between Respondent and EPA shall be directed to the OSC and Project Coordinator.

53. EPA and Respondent shall each have the right to change their respective OSC and Project Coordinator. To the extent practicable, Respondent shall provide at least five (5) days written notice to EPA prior to changing its Project Coordinator. EPA will provide Respondent with timely written notice upon any change in its designated OSC.

54. EPA's OSC shall be responsible for overseeing the implementation of this Settlement Agreement. EPA's OSC shall have the authority vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent at the Site. Absence of EPA's OSC from the Site shall not be cause for stoppage of the Work unless specifically directed by EPA's OSC.

XII. ACCESS TO PROPERTY AND INFORMATION

55. At all reasonable times, EPA and its authorized representatives may, upon presenting credentials, enter and freely move about all property at the Site, and where Work required hereunder is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor(s) pursuant to this Settlement Agreement; reviewing the progress of Respondent in carrying out the terms of this Settlement Agreement; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. EPA and its authorized representatives shall comply with the Site Health and Safety Plan while on site. Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data and other writings related to the Work undertaken in carrying out this Settlement Agreement. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.

56. Nothing herein shall be interpreted as limiting or affecting Respondent's right to preserve the confidentiality of attorney work product or attorney-client communications. However, Submissions required by this Settlement Agreement shall not be withheld on the grounds that they are privileged. No claim of confidentiality shall be made with respect to any monitoring or sampling data, hydrogeologic or geologic data or any groundwater monitoring data generated pursuant to this Settlement Agreement.

57. To the extent that Work required by this Settlement Agreement must be done on property not owned or controlled by Respondent, Respondent shall use its "best efforts" to obtain access agreement(s) from the present owner(s) of such property within thirty (30) days of the Effective Date of this Settlement Agreement. Such agreements shall provide access for EPA, its authorized representatives, and the Respondent and its authorized representatives. As used in this paragraph, "best efforts" include an offer of consideration in exchange for access. In the event that any such access agreement is not obtained within this time period, Respondent shall notify EPA in writing of its lack of access, the efforts it made to obtain access, and an explanation of the bases therefore, e.g., inability to locate the current owner of the property, lack of response to a request for access, or denial of access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. In the event EPA obtains access, Respondent shall undertake Work on such property in accordance with the approved RAWP and also shall reimburse EPA for all costs and attorney fees incurred by the United States pursuant to Section XVII (Reimbursement of Costs) of this Settlement Agreement.

XIII. RECORD RETENTION

58. All records and documents in Respondent's possession that relate in any way to Work performed under this Settlement Agreement shall be preserved during the performance of Work under this Settlement Agreement and for a minimum of three (3) years after completion of the Work. Only one copy of identical documents needs to be retained. Drafts or documents that are subsequently prepared in final form need not be retained in addition to the final document. At the conclusion of this three (3) year record retention period, Respondent shall notify EPA at

least ninety (90) days prior to the destruction of any such records or documents, and, upon EPA's request, Respondent shall make available any such records or documents to EPA.

XIV. OFF-SITE SHIPMENTS

59. Any hazardous substances, pollutants or contaminants removed off-site pursuant to this Settlement Agreement for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 C.F.R. § 300.440, promulgated pursuant to 42 U.S.C. § 9621(d)(3).

XV. COMPLIANCE WITH OTHER LAWS

60. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all Work required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental, state environmental, or facility siting laws.

XVI. ADDITIONAL WORK

61. If EPA determines that additional sampling, analysis, or reporting, or other tasks not included in this Settlement Agreement or the attached SOW are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that such additional sampling, analysis, reporting or other tasks are necessary, Respondent shall submit for review and approval by EPA a supplemental work plan for the additional sampling, analysis,

reporting or other tasks. Upon EPA's approval of the supplemental work plan, Respondent shall implement such approved supplemental work plan in accordance with the provisions and schedule contained therein. EPA's notice to Respondent of the need for additional work pursuant to this Section is subject to Section XVIII (Dispute Resolution) of this Settlement Agreement and any delay in performing such additional work resulting from Respondent's exercise of its right to dispute any EPA notice of additional work issued pursuant to this Section shall not be subject to stipulated penalties pursuant to Section XX (Stipulated Penalties) of this Settlement Agreement.

XVII. REIMBURSEMENT OF COSTS

62. Respondents shall reimburse the United States for all Past Response Costs and Interim Response Costs incurred by EPA in connection with the Site, and for Oversight Costs, not inconsistent with the NCP, and incurred by the United States in relation to the Work to be performed pursuant to this Consent Settlement Agreement.

63. Within sixty days of the Effective Date of this Settlement Agreement, Respondent shall remit payment in the amount of \$12,399.78 for reimbursement of Past Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by EPA Region 7, and shall be accompanied by a statement identifying the name and address of the Respondent, the Site name, the EPA Region and Site/Spill ID Number 07 ZD and the EPA docket number for this Settlement Agreement. The entire amount to be paid by Respondent pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund.

64. EPA will periodically submit to Respondent a bill for Oversight Costs an Itemized Cost Summary which shall serve as the basis for the payment demand. EPA's Itemized Cost Summary shall include the following information:

a. EPA's payroll costs, including the names of the individuals charging time to the Site, the pay periods in which each individual charged time to the Site, the number of hours charged by each individual per pay period, and the payroll cost per individual per pay period;

b. EPA's travel costs, including the names of the individuals charging travel costs to this Site and the date and amount of payment of each travel claim charged to the Site;

c. EPA's indirect costs charged for regional staff time, including the individual's name, pay period, the number of hours per pay period, the indirect cost rate, and total indirect cost;

d. Contract costs, including for each such payment the amount paid, the date paid, and invoice number; and

e. The amount and date paid for other costs.

The reconciled Regional Itemized Cost Summary provided by EPA shall serve as the basis for payment demands. Additional cost documentation will not be provided as a matter of course; but may be provided if a dispute arises about a particular cost item.

65. Respondent shall, within sixty (60) days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "EPA Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000.

Respondent shall simultaneously transmit a copy of the check to EPA's On-Scene Coordinator. Payments shall reference the Respondent's name and address, the EPA Site/Spill ID 07 ZD, and the docket number that appears on the face of this Settlement Agreement. The total amount to be paid by Respondent pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund.

66. If EPA does not receive payment of a billing within sixty (60) days after Respondent's receipt of the bill, Respondent shall pay interest on the unpaid balance. The interest on Past Response Costs shall begin to accrue sixty (60) days after the Effective Date and shall continue to accrue until the date of payment. The interest on Oversight Costs shall begin to accrue sixty (60) days after the date of the bill and shall continue to accrue until the date of payment. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on response costs shall begin to accrue thirty (30) days after Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the 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.

67. Respondent may dispute all or part of a bill for Oversight Costs submitted under this Settlement Agreement, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

68. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substances Superfund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of each check to EPA's OSC. Respondent shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow account plus any interest accrued in such account within thirty (30) days after the dispute is resolved.

XVIII. DISPUTE RESOLUTION

69. If Respondent disagrees, in whole or in part, with any EPA disapproval or other decision or directive pursuant to this Settlement Agreement, it shall notify EPA in writing of the objections and the bases for such objections, within thirty (30) days of receipt of such disapproval, decision, or directive. Such notice shall define the dispute and state the basis of Respondent's objections. EPA and Respondent shall then have thirty (30) days from EPA's receipt of Respondent's objections to attempt in good faith to resolve the dispute through formal negotiations (the "Negotiations Period"). This Negotiations Period may be extended upon agreement by the parties.

70. If an agreement is not reached within thirty (30) days, or such other time as agreed to by the Parties, Respondent may, within ten (10) days following the end of the Negotiation Period, request a decision by the Director of EPA Region VII's Superfund Division. The Division Director shall provide a written statement of his decision and the bases therefore, in

accordance with the terms of this Settlement Agreement. Respondent shall proceed in accordance with the Division Director's decision regarding the matter in dispute regardless of whether Respondent agrees with the decision. The question of whether or in what amounts Respondent will be liable for stipulated penalties shall be resolved by the Division Director taking into account Respondent's good faith in invoking Dispute Resolution. If Respondent does not perform the Work in accordance with the Division Director's decision, EPA reserves its right to conduct the Work itself, to seek reimbursement from Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

71. The existence of a dispute as defined herein and EPA's consideration of such matters as placed in dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Settlement Agreement except those directly affected by the matter(s) in dispute during the pendency of the dispute resolution process unless mutually agreed upon (except as to a dispute which is resolved in Respondent's favor) or unless otherwise excused, tolled or suspended by EPA, Region VII's Division Director. Stipulated penalties shall accrue from the first day of non-compliance by Respondent, and shall continue to accrue during dispute resolution procedures until twenty (20) days after Respondent requests a determination by the Division Director pursuant to Paragraph 70 herein, after which date stipulated penalties shall stop accruing until issuance by the Division Director of a decision resolving the dispute. Stipulated penalties shall continue to accrue during the dispute resolution process for all matters unrelated to the contested matters at issue in the dispute resolution process. Notwithstanding

any other provision of this Settlement Agreement, the EPA may, in its discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

72. Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant hereto shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with this Settlement Agreement.

XIX. FORCE MAJEURE

73. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established by this Settlement Agreement, unless the performance is prevented or delayed by events which constitute a force majeure. For purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondent or its consultants, contractors, subcontractors or agents, that 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, unanticipated or increased costs of performance, normal precipitation events, changed economic circumstances or failure to obtain federal, state or local permits, but may include, as determined by EPA, strikes, lockouts or industrial disputes.

74. Respondent shall notify EPA orally within seventy-two (72) hours after the event, and shall also notify EPA in writing within ten (10) days after Respondent becomes aware of events that constitute a force majeure. Such notice shall identify the event causing the delay or anticipated delay; provide an estimate of the anticipated length of delay, including necessary demobilization and remobilization; state the measures taken or to be taken to minimize delay;

and state the estimated timetable for implementation of these measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section may constitute a waiver of any claim of force majeure by Respondent.

75. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA, taking into account the length of the delay and any remobilization requirements. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the force majeure.

XX. STIPULATED PENALTIES

76. Unless there has been a written modification of a compliance date by EPA, an excusable delay as defined under Section XIX (Force Majeure) of this Settlement Agreement, or a pending dispute resolution matter pursuant to Section XVIII (Dispute Resolution) of this Settlement Agreement, Respondent shall pay stipulated penalties for failure to meet any requirement of this Settlement Agreement, as set forth below. Compliance by Respondent shall include completion of an activity under this Settlement Agreement or a plan approved under this Settlement Agreement or completion of any other matter under this Settlement Agreement in an acceptable manner and within the time schedules specified and approved in the SOW.

a. For failure to submit to EPA any Submission requiring EPA approval (except the progress reports) required by this Settlement Agreement, including the attached

SOW:

- i. \$250 per day for the first through seventh days of noncompliance;

- ii. \$500 per day for the eighth through the thirtieth days of noncompliance; and
- iii. \$1,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

b. For failure to submit a progress report as required in Section VIII (Work to be Performed) above, as required:

- i. \$50 per day for the first through seventh days of noncompliance;
- ii. \$100 per day for the eighth through the thirtieth days of noncompliance and;
- iii. \$150 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

c. For any other violation of the Settlement Agreement, or for failure to properly perform the Work required by this Settlement Agreement, or for failure to perform Work within the time frames contained in and approved under this Settlement Agreement, other than Submissions listed in 76.a. and 76.b.:

- i. \$250 per day for the first through seventh days of noncompliance;
- ii. \$500 per day for the eighth through the thirtieth days of noncompliance and;
- iii. \$1,000 per day for the 31st day and each succeeding day of noncompliance thereafter.

77. Except as set forth in Paragraph 71, all penalties shall begin to accrue on the date that complete performance is due or a violation occurs and shall continue to accrue through the

final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

78. Except for those penalties that are the subject of dispute pursuant to Section XVIII (Dispute Resolution) herein, all penalties owed under this Section shall be due within sixty (60) days of receipt by Respondent of written demand by EPA for payment thereof. Interest shall begin to accrue on the unpaid balance at the end of this thirty (30) day period. Interest will accrue on the unpaid balance until such penalties and interest have been paid in full and will be compounded annually.

79. All penalties shall be paid by certified or cashier's check made payable to "Treasurer of the United States," and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

All payments shall reference Respondent's name and address, the EPA Docket Number which appears on the face of this Settlement Agreement, and shall indicate that they are in payment of stipulated penalties. A copy of the transmittal of payment and check shall be sent to EPA's Project Coordinator.

80. Payment of said penalties shall not relieve Respondent of the responsibility to comply with this Settlement Agreement.

XXI. RESERVATION OF RIGHTS

81. Except as specifically provided in this Settlement Agreement, and subject to Section XXIV (Covenant Not to Sue) of this Settlement Agreement, nothing herein shall limit the power

and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, at or from the Site.

Further, except as expressly provided in this Settlement Agreement and subject to Section XXIV (Covenant Not to Sue) of this Settlement Agreement, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable actions 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. Provided, however, EPA shall not seek civil penalties for violations of this Settlement Agreement for which stipulated penalties have been assessed and paid pursuant to Section XX (Stipulated Penalties), prior to the filing of a civil action to assess and/or collect such penalties. Subject to Section XXIV (Covenant Not to Sue), EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Settlement Agreement or the Site that Respondent has failed to reimburse.

82. Except as expressly provided in this Settlement Agreement, Respondent reserves all rights, causes of action, defenses and claims it has with respect to liability for releases or threatened releases of hazardous substances from the Site.

XXII. OTHER CLAIMS

83. 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. Neither the United States nor EPA shall be a party or be held out as a party to any

contract entered into by the Respondent or its agents, successors, representatives, contractors, or assigns in carrying out activities pursuant to this Settlement Agreement.

84. Except as provided herein, this Settlement Agreement does not constitute a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, RCRA or other statutes, or the common law, including, but not limited to, any claims of the United States for costs, damages and interest under Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a).

85. This Settlement Agreement does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent agrees not to sue the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Oversight 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 Missouri 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 Site.

This agreement 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 Paragraph 81 and 82, 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.

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

XXIII. CONTRIBUTION PROTECTION

87. 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 protections 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, Past Response Costs and Oversight Costs. 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, Past Response Costs, and Oversight Costs.

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

89. Respondent agrees that with respect to any suit or claim for contribution brought against it for matters covered by this Settlement Agreement, it will notify EPA of the institution of the suit or claim within thirty (30) days of service of any such suit or claim. Respondent's failure to notify EPA shall not in any way impact the protection from contribution identified in paragraph 87.

XXIV. COVENANT NOT TO SUE

90. Except as otherwise specifically provided in this Settlement Agreement, upon issuance of the EPA notice referred to in Section XXVII (Notice of Completion) of this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for the Work performed under this Settlement Agreement.

91. Except as otherwise specifically provided in this Settlement Agreement, in consideration and upon Respondent's payments of the Past Response Costs and Oversight Costs specified in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the recovery of such costs paid by Respondent under this Settlement Agreement.

92. The covenant not to sue set forth in paragraph 90 shall take effect upon issuance of the EPA notice referred to in Section XXVII (Notice of Completion). The covenant not to sue

set forth in paragraph 91 shall take effect upon receipt by EPA of the payments required by Section XVII (Reimbursement of Costs).

93. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XXV. INDEMNIFICATION

94. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, and employees from any and all claims or causes of action arising from, or on account of, negligent or otherwise wrongful acts or omissions of Respondent, its officers, employees, contractors, subcontractors, receivers, trustees, agents, successors or assigns, in carrying out activities pursuant to this Settlement Agreement, including, but not limited to, claims arising from construction delays.

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

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.

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

XXVI. FINANCIAL ASSURANCE

97. By April 1, 2010, Respondent shall establish and maintain financial security in an amount equal to the estimated cost of the Work to be performed under this Settlement Agreement in one or more of the following forms:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

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

e. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

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

98. If at any time during the effective period of this Consent Decree, the Respondent provides financial assurance for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 97(e) or Paragraph 97(f) above, Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Settlement Agreement, including but not limited to (i) the initial submission of required financial reports and statements from Respondent's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of

Respondent's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which Respondent no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the financial assurance methods specified in this Section XXVI, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the estimated cost of the Work.

99. In the event that EPA determines at any time that the financial assurance provided by the Respondent pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that the Respondent becomes aware of information indicating that the financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondent, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of Respondent becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance listed in Paragraph 97 of this Settlement Agreement that satisfies all requirements set forth in this Section XXVI. In seeking approval for a revised or alternative form of financial assurance, Respondent shall follow the procedures set forth in this Section. Respondent's inability to provide financial assurance for completion of the Work shall in no way excuse performance of

any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with the terms hereof.

100. Modification of Amount and/or Form of Financial Assurance.

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

b. Change of Form of Financial Assurance.

(i) If, after the Effective Date of this Settlement Agreement, Respondent

desires to change the form or terms of any financial assurance provided pursuant to this Section, Respondent may, on any anniversary date of the Effective Date of this Settlement Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the financial assurance provided hereunder. The submission of such proposed revised or alternative form of financial assurance shall be as provided in this Section. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

(ii) Respondent shall submit a written proposal for a revised or alternative form of financial assurance to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance must satisfy all requirements set forth or incorporated by reference in this Section. Respondent shall submit such proposed revised or alternative form of financial assurance to the EPA OSC in accordance with Section XI ("Project Coordinator and On-Scene Coordinator") of this Settlement Agreement. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative financial assurance mechanism submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the

documents submitted to EPA as part of the proposal, and such financial assurance shall thereupon be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA OSC within thirty days of receiving a written decision approving the proposed revised or alternative financial assurance.

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

XXVII. MODIFICATIONS

101. Modifications to the SOW and RAWP may be made orally or in writing by mutual agreement of the OSC and the Project Coordinator. If the OSC and the Project Coordinator orally agree to a modification of the SOW or the RAWP, it will be memorialized in writing within thirty (30) days; provided, however, that the Effective Date of the modification shall be the date of the oral agreement. Any other requirements of the Settlement Agreement may be modified in writing by mutual agreement of EPA and the Respondent.

102. If Respondent seeks permission to deviate from the SOW or RAWP, Respondent's Project Coordinator shall submit a written request to EPA's OSC 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 101.

103. No informal advice, guidance, suggestion or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Settlement Agreement, and to comply with all requirements of this Settlement Agreement unless or until this Settlement Agreement may be formally modified.

XXVIII. NOTICE OF COMPLETION

104. Upon EPA's determination that all activities required hereunder by Respondent have been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement under Section XIII (Record Retention), Section XVII (Reimbursement of Costs), and Section XXI (Reservation of Rights), EPA will provide notice to Respondent. If EPA reasonably determines that any activities required herein by Respondent have not been completed in accordance with this Settlement Agreement, EPA will so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies in accordance with EPA's notice. Any resubmissions will be reviewed by EPA in accordance with Section X (Submissions Requiring Agency Approval).

XXIX. SIGNATURE BY PARTIES

105. This Settlement Agreement may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

XXX. EFFECTIVE DATE

106. This Settlement Agreement shall become effective upon receipt by Respondent of a fully executed copy of this Settlement Agreement.

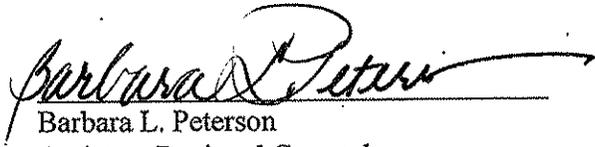
IT IS SO ORDERED.



Cecilia Tapia
Director
Superfund Division
Region VII
United States Environmental Protection Agency

DATE: 9/30/09

For the United States Environmental Protection Agency:



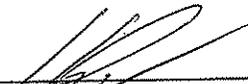
Barbara L. Peterson
Assistant Regional Counsel
Region VII
United State Environmental Protection Agency

DATE: 9/29/09

In the Matter of Lexington Former Manufactured Gas Plant #2 Site. Proceedings under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9604, 9607 and 9622).

The representative of the Respondent who has signed the signature page certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Settlement Agreement and to bind the party he/she represents to this document.

For KCP&L Greater Missouri Operations Company, a Delaware Corporation:

BY:  _____ DATE: 9/29/09
Name: William G. Riggins
Title: General Counsel & Chief Legal Officer

ATTACHMENT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for Removal Action at the Lexington Former Manufactured Gas Plant #2 Site, Lexington, Lafayette County, Missouri

FROM: Susan Fisher, On-Scene Coordinator *Susan Fisher*
Emergency Response and Removal North Branch

THRU: *Kenneth S. Buchholz*
Kenneth S. Buchholz, Chief
Emergency Response and Removal North Branch

TO: Cecilia Tapia, Director
Superfund Division

CERCLIS ID#: MOD985816867
SITE ID#: 07ZD
CATEGORY OF REMOVAL: Non-Time-Critical
NATIONALLY SIGNIFICANT: No

I. PURPOSE

The purpose of this Enforcement Action Memorandum is to request approval for a proposed non-time critical enforcement-lead removal action at the Lexington Former Manufactured Gas Plant #2 Site (site), located at 10th Street and Highland Avenue in Lexington, Lafayette County, Missouri. This Proposed Responsible Party (PRP) removal action includes the excavation and proper off-site disposal of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances consisting of contaminated surface and subsurface soils at the site. Areas subject to excavation would be backfilled with clean fill material, which would be properly compacted and graded to facilitate surface runoff. Institutional controls will also be instituted as part of this action. There are no nationally significant or precedent-setting issues associated with this removal action.



II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal Site Evaluation

KCP&L Greater Missouri Operations Company (KCP&L GMO) conducted a Removal Site Evaluation (RSE) in two phases pursuant to an Administrative Order on Consent with EPA signed May 23, 2000, Docket No. CERCLA-7-2000-0020. The purpose of the RSE was to determine the nature and extent of manufactured gas plant residuals, identify possible receptors at the site, and collect data to evaluate whether residuals pose a threat to public health, welfare, or the environment. The RSE was also intended to gather information to determine if a removal action was appropriate and to provide information for remedy selection.

KCP&L GMO completed Phase I RSE field activities in April 2001. Phase II RSE field activities took place from December 2001 to February 2002. The RSE included sediment, soil, and water sampling, and evaluation of the bedrock conditions. The results of both phases of the RSE are summarized in the document titled Removal Site Evaluation Report for the Former Manufactured Gas Plant, 10th Street and Highland Avenue, Lexington, Missouri (RSE Report), dated April 2002.

During the RSE, suspected clinker and coal were observed in the surface and subsurface soil on both the southwest and northeast parcels of land which comprise the site. Solidified gas plant residual was observed in two samples collected from the northeast parcel. Viscous gas plant residual was observed in four subsurface soil samples and one core location collected from the northeast parcel. The majority of the gas-plant impacts are near the location of the former process units on the northeastern parcel of the site in the subsurface soil.

Chemical constituents detected in site soils during the RSE include several polynuclear aromatic hydrocarbon (PAH) compounds such as naphthalene, benzo(a)anthracene, pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and benzo(a)pyrene, along with arsenic, lead, and benzene. Surface soil samples showed elevated levels of PAH compounds. The highest total PAH level in the surface soil on the northeast parcel was 444.5 milligrams/kilogram (mg/kg). The highest total PAH level in the surface soil on the southwest parcel was 6.7 mg/kg.

Gas-plant-related contaminants were also found in subsurface soils at elevated levels. The total PAH levels on the southwest parcel were as high as 2.9 mg/kg at a depth of 6 to 7 feet below ground surface. The total PAH levels on the northeast parcel were as high as 967.8 mg/kg at a depth of 15 to 17 feet below ground surface.

Elevated levels of lead were detected in both the surface and subsurface soils at the site. Lead levels in the surface soil ranged as high as 1,300 mg/kg, and in the subsurface soil as high as 1,290 mg/kg.

Benzene, toluene, ethyl benzene, and xylene (BTEX) were found at the site. Total BTEX compounds were detected in the subsurface soil as high as 89.2 mg/kg on the northeast parcel at a depth of 9 to 10 feet below ground surface.

2. Physical Location

The site is located on the northeast and southwest corners of the intersection at 10th Street and Highland Avenue in Lexington, Lafayette County, Missouri. The legal description of the site is Northeast and Southwest of 10th Street and Highland Avenue Intersection, lots 1-6, 8-10, Block L, and lots 1, 2 and 3 in Block E, Andersons Addition. The approximate site coordinates are 39° 11' 20.65" latitude and 93° 52' 59.62" longitude.

3. Site Characteristics

The site occupies approximately 1.25 acres in the northwestern part of Lexington, Missouri. The site is located on two parcels of land: one at the southwest corner and one at the northeast corner of the intersection of 10th Street and Highland Avenue. Several private residences are located immediately adjacent to or near the site. A wastewater treatment plant is located to the northwest, and the Battle of Lexington State Historic Site is located to the northeast. A manufactured gas plant operated at the site from approximately 1887 to 1924. Both parcels are currently vacant.

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

Hazardous substances as defined by section 101(14) of CERCLA, as amended, and listed at 40 CFR § 302.4, have been detected in the surface and subsurface soil at the site. These include arsenic, lead, benzene, toluene, ethylbenzene, xylene, and PAH compounds naphthalene, pyrene, benzo(k)fluoranthene, and benzo(a)pyrene. Samples collected during the RSE detected PAH levels in the surface soil to 444.5 mg/kg, and in the subsurface soil up to 967.8 mg/kg. Lead levels were detected in the surface soil up to 1,300 mg/kg, and in the subsurface soil up to 1,290 mg/kg. BTEX compounds were detected in the subsurface soil up to 89.2 mg/kg.

5. National Priority List (NPL) Status

The site is not on, nor has it been proposed for, the NPL.

B. Other Actions to Date

1. Previous Actions

Phase I RSE field activities were completed in April 2001. Phase II RSE field activities were completed in February 2002. The results of both phases of the RSE were

documented in an April 2002 RSE Report. The RSE Report was approved by EPA on May 29, 2002. A Baseline Risk Assessment was prepared by KCP&L GMO, and approved by EPA on November 7, 2003. A Phase I archaeological survey was completed in November 2005. The results of the survey are documented in a November 29, 2005, Transmittal of Phase I Survey Results report. The survey was reviewed by the Missouri Department of Natural Resources (MDNR) State Historical Preservation Office. The Engineering Evaluation/Cost Analysis (EE/CA) was prepared and placed on public notice on July 1, 2009, for a 30-day comment period. A public availability session was held on July 16, 2009, at the Lexington City Hall. No written comments on the EE/CA were received during the comment period.

2. Current Actions

No current actions are being conducted at the site.

C. State and Local Authorities' Role

1. State and Local Actions to Date

MDNR completed a Preliminary Assessment for the site in June 1995. They have reviewed and provided comments on the RSE, the Baseline Risk Assessment and the EE/CA.

2. Potential for Continued State/Local Response

The primary role of MDNR in this removal action will be to continue to review the proposed actions and continue to coordinate with the OSC. EPA will also coordinate closely with the local authorities during the removal action. Neither the state nor the local authorities have the capacity or the resources to conduct the response.

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

A. Threats to Public Health or Welfare

CERCLA section 104 authorizes a removal response whenever any hazardous substance is released, or there is a substantial threat of such a release into the environment. In determining whether there is a threat to the public health or welfare or the environment, the site is evaluated using the eight criteria from the National Contingency Plan (NCP), 40 CFR § 300.415(b)(2). The following is a discussion of the criteria that apply to the site.

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

The existence of nearby residential areas, unrestricted access to soils containing high levels of PAHs, volatile organic compounds (VOCs) and lead, and the potential off-site transport of contaminants via water erosion presents the threat of exposure of nearby human populations, animals or the food chain to hazardous substances at the site.

40 CFR § 300.415(b)(2)(iv) – High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate.

High levels of PAHs, VOCs and lead exist in surface soils at the site. There is the potential for water erosion of those soils and migration of contaminants off-site.

40 CFR § 300.415(b)(2)(v) – Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

Wind and rain events may result in the migration of contaminants at the site.

IV. ENDANGERMENT DETERMINATION

All of the materials described in this Enforcement Action Memorandum are considered CERCLA hazardous substances as defined at § 101(14), 42 U.S.C. § 9601(14). The actual and threatened release of hazardous substances at the site may present an imminent and substantial endangerment to the public health, welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

All soils contaminated with CERCLA hazardous substances removed from the site will be disposed of in a manner consistent with the CERCLA off-site rule. Specific tasks associated with the removal and disposal of the contaminated soil include the following:

a. Preparation of a written Health and Safety Plan in accordance with 29 CFR § 1910.120 to ensure the protection and safety of all workers during on-site removal activities.

b. Preparation of a Removal Action Work Plan (RAWP). The RAWP shall describe the proposed tasks and schedules associated with excavation, processing and off-site disposal of surface and subsurface soils, the procedures for backfilling all excavated areas, and establishing a vegetative cover over the excavated areas. The RAWP will include the following information:

1) A clear and concise description of roles, relationships, and assignment of responsibilities among the Respondent, Project Coordinator, Quality Assurance Officer, Construction Supervisor, and Construction Personnel.

2) A detailed description of site preparation activities for the excavation or surface and subsurface soils at the site, including establishment of security and control, definition of clearing and grubbing limits, establishment of work and support areas, and definition of decontamination areas, for the excavation of surface and subsurface soils at the Site, in general agreement with the conceptual excavation plan described in the EE/CA, a plan view which is included in the EE/CA.

3) A proposed design of an air monitoring program to be used during site excavation and material handling activities.

4) A description of proposed sampling and analytical procedures, including field screening and laboratory methods, to be conducted on soil samples collected during excavation activities.

5) Description of the methods proposed to be used to control odors, fugitive dust and/or volatilization of PAHs from excavation at the site.

6) A description of the method of transportation for all contaminated materials, manifesting requirements in accordance with federal and state Department of Transportation (DOT) regulations, and material quantity accounting procedures.

7) A detailed description of the sampling and quality assurance/quality control (QA/QC) measures to be taken during the sampling activities.

8) A description of Site restoration requirements after completion of removal action. This description shall include all work necessary to restore property (including off-site property) to its original pre-removal condition, including but not limited to the placement of clean fill, backfilling along the sanitary sewer line, and reseedling or sodding of grass areas, and

9) A plan for identifying and complying with applicable permitting requirements, historical preservation and environmental statutes.

c. Preparation of a Quality Assurance Project Plan (QAPP) for all sampling and monitoring activities.

d. Upon approval of the RAWP, KCP&L GMO will implement the EPA-approved RAWP.

e. Preparation of a Removal Completion Report (RCR). Within 30 days after completion of the activities, required by the EPA-approved RAWP, KCP&L GMO will submit to EPA for review and approval a RCR summarizing the field activities and the results of those activities.

2. Contribution to Remedial Performance

This is a non-NPL site. The proposed actions will mitigate the immediate health threat posed by CERCLA hazardous substances found on-site. At this time, no remedial actions are planned for this site.

3. Engineering Evaluation/Cost Analysis

KCP&L GMO prepared an EE/CA, which identified proposed removal action alternatives for contaminated soil at the site. The EE/CA was prepared under CERCLA to provide an organized and systematic framework for evaluating the best response technologies for addressing contaminated soil. The EE/CA evaluated five removal action alternatives, which are described in the EE/CA and were evaluated based on effectiveness, implementability, and cost. The alternatives evaluated included No Action, Limited Action, Surface Cap, Shallow Excavation and Off-Site Disposal, and Shallow and Deep Excavation and Off-Site Disposal. Based on the comparative analyses, the recommended alternative is the Shallow and Deep Excavation and Off-Site Disposal. Table 1 identifies the Preliminary Remediation Goals (PRGs).

4. Applicable or Relevant and Appropriate Requirements (ARARS)

Federal ARARS

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) at 40 CFR § 300.415 requires that removal actions shall, to the extent practicable, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental, state environmental or facility-siting laws. The following site-specific ARARS have been identified for this action:

- Occupational Safety and Health Act Standards – 29 CFR part 1910 will be applicable to all actions.
- DOT Regulations – 49 CFR parts 107 and 171-177, DOT hazardous material transportation regulations, may be relevant and appropriate for transportation of the contaminated soils.
- The CERCLA Off-Site Rule – promulgated pursuant to CERCLA section 121(d)(3), 42 U.S.C. § 9621(d)(3), and formally entitled “Amendment to the National Oil and Hazardous Substance Pollution Contingency Plan; Procedures

for Planning and Implementing Off-Site Response Action: Final Rule," 58 Fed Reg. 49200 (Sept. 22, 1993), codified at 40 CFR § 300.440.

State ARARS

State ARARS were identified in Appendix D of the EE/CA, as they pertain to this removal action.

5. Project Schedule

Upon approval of the RAWP, KCP&L GMO will implement the EPA-approved RAWP in accordance with the schedule in the approved RAWP. Once on-site activities are begun, it is estimated to take 90 to 120 days to complete the removal action.

B. Estimated Costs

This Enforcement Action Memorandum assumes that the proposed actions will be performed by the Responsible Party (RP). It is anticipated that the RP's cost associated with conducting this non-time-critical removal action will be approximately \$800,000. A further detailed breakdown of anticipated project costs is not required due to the enforcement nature of the action.

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

If the requested action is delayed or not taken, the potential for a release of a hazardous substance will continue.

VII. OUTSTANDING POLICY ISSUES

There is no known outstanding policy issues associated with this site or the actions proposed for removal.

VIII. ENFORCEMENT

An Administrative Settlement Agreement and Order on Consent for Removal Action is being negotiated with KCP&L GMO and will be signed before initiation of the proposed removal actions. Because of the enforcement-lead nature of the proposed action, a separate Enforcement Addendum is not required.

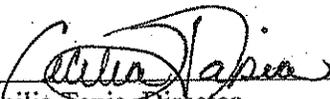
IX. RECOMMENDATION

This Enforcement Action Memorandum represents the selected removal action for the Lexington Former Manufactured Gas Plant # 2 site. The removal action was developed in

accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the site.

Conditions at the Site meet the NCP section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed enforcement removal action. This is a RP-lead removal action that does not require funding from the Regional Removal Allowance and does not require approval of a removal project ceiling.

Approved:



Cecilia Tapia, Director
Superfund Division

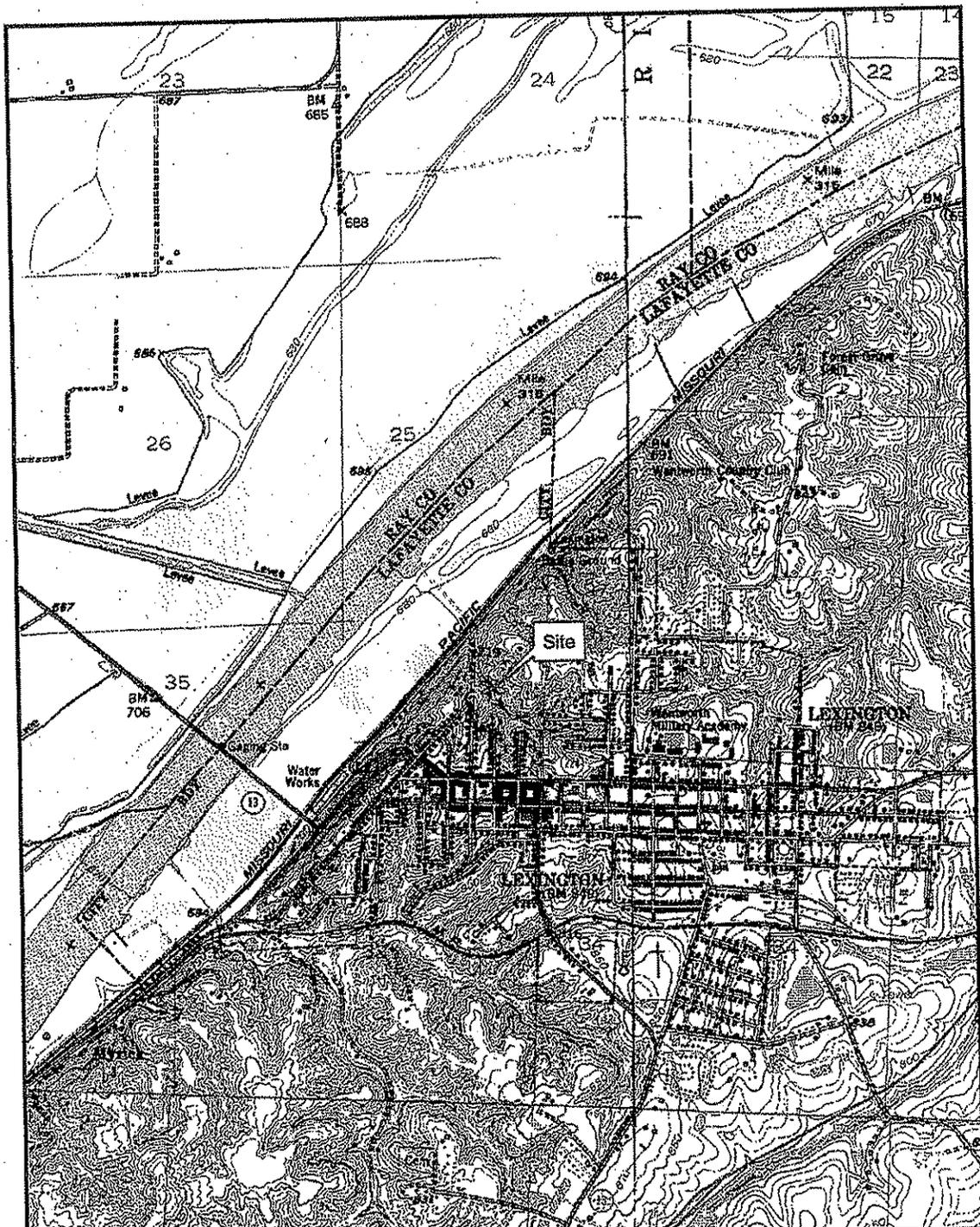
2/30/09
Date

Attachments:

Site Location Map

Removal Area Extent Map

PRG Table



Source: USGS 7.5' Series Topographic Maps
 Lexington West Quadrangle 1979
 Lexington East Quadrangle 1978

2000 0 2000 Feet



Figure 1-1

SITE LOCATION MAP
FORMER MANUFACTURED GAS
PLANT SITE
LEXINGTON, MISSOURI

Table 1
Preliminary Remediation Goals for Lexington Former Manufactured Gas Plant #2, Lexington, Missouri

Chemical	Recommended Preliminary Remediation Goal (PRG) (mg/kg)
Volatile Organic Compounds	
Benzene	0.27
Semivolatile Organic Compounds	
Benzo(a)anthracene	20.20
Benzo(a)pyrene	2.02
Benzo(b)fluoranthene	20.20
Dibenzo(a,h)anthracene	20.20
Indeno(1,2,3-cd)pyrene	20.20
Naphthalene	9.20
Inorganic Compounds	
Arsenic	15.70
Lead	1,070

ATTACHMENT 2

ATTACHMENT 2

STATEMENT OF WORK FOR THE REMOVAL ACTION AT THE LEXINGTON FORMER MANUFACTURED GAS PLANT #2 SITE LEXINGTON, MISSOURI

PURPOSE

1. The purpose of this Statement of Work (SOW) for the Lexington Former Manufactured Gas Plant #2 Site (Site) is to define the tasks, standards and guidelines which shall be followed by the Respondent to conduct a removal action to remove and properly dispose of contaminated surface and subsurface soil from the Site, including the soil along the sanitary sewer line that is located in the northeast parcel, identified in the Engineering Evaluation and Cost Analysis (EE/CA) for this Site. All excavated areas will be backfilled with clean soil and graded to ensure proper drainage across the site. In accomplishing the above purposes, the Respondent shall comply with the provisions of the corresponding Administrative Settlement Agreement and Order on Consent (Settlement Agreement) between the United States Environmental Protection Agency (EPA) and KCP&L Greater Missouri Operations Company (Respondent), this SOW, CERCLA, the National Contingency Plan (NCP) and EPA guidance (including, but not limited to the guidance documents referenced in this SOW). The schedule and statement of work to be performed under the Settlement Agreement is set forth hereinafter.

WORK TO BE PERFORMED

2. Respondent shall perform the tasks set forth below in designing and implementing the work required for the Site. Additionally, Respondent shall insure the design and implementation of EPA's chosen remedy meets or exceeds the performance standards, specifications and applicable or relevant and appropriate requirements (ARARs) set forth below. The work required shall consist of the following three tasks:

- TASK I: Preparation of Removal Action Work Plan (RAWP)
- TASK II: Performance of Removal Action
- TASK III: Reports

TASK I: Removal Action Work Plan

3. Within ninety (90) days of receipt of EPA's authorization to proceed with the contractor indentified by the Respondent to develop the RAWP, Respondent shall prepare and submit to EPA for review and approval, a Removal Action Work Plan (RAWP) that shall describe the proposed tasks and schedules associated with excavation, processing and offsite disposal of surface and subsurface soils, the procedures for backfilling all excavated areas, and establishing a vegetative cover over the excavated areas. The RAWP shall be prepared to require the response action to be performed in accordance with standards set forth in Task II, below, and shall include the following information:

- A. A clear and concise description of roles, relationships and assignment of responsibilities among the Respondent, Project Coordinator, Quality Assurance Officer, Construction Supervisor and Construction Personnel;
- B. A detailed description of site preparation activities, including establishment of security and control, definition of clearing and grubbing limits, establishment of work and support areas, and definition of decontamination areas; for the excavation of surface and subsurface soils at the Site, in general agreement with the conceptual excavation plan described in the EE/CA, a plan view which is included in the EE/CA;
- C. A proposed design of an air monitoring program to be used during site excavation and material handling activities;
- D. A description of proposed sampling and analytical procedures, including field screening and laboratory methods, to be conducted on soil samples collected during excavation activities;
- E. Description of the methods proposed to be used to control odors, fugitive dust and/or volatilization of PAHs from excavation at the Site;
- F. A description of the method of transportation for all contaminated materials, manifesting requirements in accordance with federal and state Department of Transportation (DOT) regulations, and material quantity accounting procedures;
- G. A detailed description of the sampling and quality assurance/quality control (QA/QC) measures to be taken during the sampling activities;
- H. A description of Site restoration requirements after completion of removal action. This description shall include all work necessary to restore property (including off-site property) to its original pre-removal

condition, including but not limited to the placement of clean fill, backfilling along the sanitary sewer line, and reseeding or sodding of grass areas, and

I. A plan for identifying and complying with applicable permitting requirements, historical preservation and environmental statutes.

4. As components of the Removal Action Work Plan, Respondent shall develop and submit the following project plans to support field activities:

A. Sampling and Analysis Plan (SAP); and

B. Health and Safety Plan (HSP).

5. The SAP shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs to characterize the site. No field activities shall take place until EPA has reviewed and approved the SAP. The SAP shall consist of two parts:

A. A Field Sampling Plan (FSP) which describes the estimated number, type, and location of samples to be collected at the site to further define the extent of contamination or to confirm when certain actions have achieved the desired results, or to conduct tests on the material for treatability. Respondents shall include provisions for split samples provided to EPA, its contractors, or the State of Missouri as appropriate. No less than ten (10) working days notice must be given to EPA prior to collecting samples. The plan shall also include the types of analyses to be conducted for each sample and a brief rationale for collecting the sample and performing the analysis.

B. A Quality Assurance Project Plan (QAPP), which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action. The QAPP shall be written in accordance with a category III project as described in "Preparing Perfect Project Plans", U.S. EPA, Office of Research and Development, EPA/600/9-89/087, October 1989.

6. The FSP shall require that all sample collection and analysis be performed in compliance with EPA approved methods, including timing of analysis and documentation of sample collection, handling, and analysis. Any proposed sampling scheme shall be capable of producing representative and statistically valid samples, and generally conform to the following EPA guidance documents:

A. Compendium of ERT Field Analytical Procedures - Office of

Emergency and Remedial Response, Publication 9360.4-04, May 1992.

B. Compendium of ERT Waste Sampling Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/008, January 1991.

C. QA/QC Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures - Office of Emergency and Remedial Response, EPA/540/G-90/004, April 1990.

D. Removal Program Representative Sampling Guidance, Volume 1: Soil - Office of Emergency and Remedial Response, publication 9360.4-10, November 1991.

E. Compendium of ERT Soil Sampling and Surface Geophysics Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/006, January 1991.

7. The FSP shall require that all samples shall be analyzed by a laboratory that participates in a quality assurance/quality control program equivalent to that specified in, "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM 05.4, March 2004", and "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM 01.1, May 2005".

8. The Health and Safety Plan shall be prepared in accordance with 40 C.F.R. Part 300.150 and all applicable OSHA requirements at 29 C.F.R. 1910. In addition to the requirements addressed in these regulations, this plan shall generally follow the guidelines established in EPA's "Standard Operating Safety Guides", Office of Emergency and Remedial Response, publication 9285.1-03, June 1992.

Task II: Performance of Removal Action

9. The Removal Action shall be conducted in accordance with the following performance standards, as set forth in the approved RAWP:

A. The RAWP shall include a detailed description of the following removal work:

(1) Excavation and off-site treatment or disposal of surface soil contaminated areas as identified in the EE/CA, the extent of the surface soil contaminated areas will be defined by sampling as specified in the FSP;

(2) Excavation and off-site treatment or disposal of subsurface soil contaminated areas as identified in the EE/CA, the extent of the

subsurface soil contaminated areas will be defined by sampling as specified in the FSP;

(3) Excavation and off-site treatment or disposal of surface and subsurface contaminated soils along the sanitary sewer line located on the northeast parcel. The extent of the excavation of the soils along the sewer line will be determined by sampling as defined in the FSP. The excavation will eliminate the exposure pathway to construction workers during any potential work on the sewer line.

(4) If on-site storage of contaminated materials is necessary at any time during the removal activity, such material must be stored in such a manner as to prevent migration of contaminants.

(5) A detailed description of all backfilling, compaction, and restoration activities.

10. Upon EPA approval of the RAWP, Respondent shall construct and implement the Removal Action in accordance with the approved designs, schedules and plans contained therein. Respondent shall document completion of the Removal Action in accordance with the following procedures:

A. Removal Completion Report: Within thirty (30) days after completion of the activities required by the EPA-approved RAWP, Respondent shall submit to EPA for review and approval a Removal Completion Report (RCR). Upon confirmation that the purpose, intent and requirements of the RAWP have been satisfied, in conformance with engineering practice, EPA shall provide Respondent a written certification of completion of the Removal Action.

TASK III: REPORTS

11. Respondent shall prepare the workplans and reports set forth in Task I through Task II to accomplish the design, construction, operation and maintenance, and monitoring of the Removal Action. In addition, the Respondent shall provide the following documentation:

A. Monthly Progress Reports: Respondent shall provide the EPA with signed, monthly progress reports by the 15th day of the calendar month following the monthly reporting period. Submittal of the monthly progress reports will begin the first full month following the date of receipt of EPA's approval of the RAWP, and continue until Respondent has submitted its RCR. At a minimum, the monthly progress reports shall include the following information:

- (1) A summary of actions which have been taken to comply with the Settlement Agreement during the month;
- (2) A description of work planned for the next two (2) months with scheduling related to such work and the overall project schedule for the removal; and
- (3) A summary of problems encountered and any anticipated problems, any actual delays and solutions developed and implemented to address any actual or anticipated problems or delays.

SCHEDULE OF SOW SUBMISSION
DUE DATES AND ACTIVITY IMPLEMENTATION DATES

TASKS I AND II - Design and Implementation of Removal Action

- Submit Removal Action Work Plan - within 90 days after receipt of EPA's authorization to proceed with the contractor identified by the Respondent to develop the Removal Action Plan
- Implement Removal Action – In accordance with the schedule in the approved Removal Action Work Plan.

TASK III - Reports

- Submit Monthly Progress Reports - fifteenth (15) day of each month following the receipt of EPA's approval of the RAWP and continuing until Respondent has submitted its RCR.

ATTACHMENT 3

Attachment 3

Additional Reference Documents

"Compendiums of the Environmental Response Team's (ERT) Standard Operating Procedures (SOPs) for Sampling and Analytical Protocols", January 1991, OSWER Directives Nos. 9360.4-02, 9360.4-03, 9360.4-05, 9360.4-06, 9360.4-07, and 9360.4-08.

"Removal Program, Representative Sampling Guidance", November 1991, OSWER Directive No. 9360.4-10.

"Data Quality Objectives for the Superfund Process", September 1993, OSWER Directive No. 9355.9-01.

"EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations", October 1997, U.S. EPA, Quality Assurance Division, EPA QA/R-5.

"Quality Assurance/Quality Control Guidance for Removal Activities, Sampling QA/QC Plan and Data Validation Procedures", April 1990, OSWER Directive No. 9360.4-01.

"USEPA Contract Laboratory Program Statement of Work for Organic Analysis", August 1994, OLM03.1, EPA 540/R-94/073.

"National Oil and Hazardous Substances Contingency Plan: Final Rule", Vol. 55, No. 46 Fed Reg. 8666 (March 8, 1990).

IN THE MATTER OF Lexington Former Manufactured Gas Plant #2 Site; KCP&L Greater
Missouri Operations Company, Respondent
Docket No. CERCLA-07-2009-0018

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Settlement
Agreement and Order on Consent was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Barbara L. Peterson
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael D. Hockley
Spencer Fane Britt & Browne
1000 Walnut
Suite 1400
Kansas City, Missouri 64106

Dated: 10/2/09


Kathy Robinson
Hearing Clerk, Region 7