U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

PCE/TCE Northeast Contamination Site
York, Nebraska
NEN000706105

Kroy Building Products, Inc. and

Kroy Industries, Inc.,

Respondents.

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

EPA Docket No.
CERCLA-07-2019-0204

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

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), Kroy Building Products, Inc., and Kroy Industries, Inc. (Respondents). This Settlement provides for the performance of a remedial investigation and feasibility study (RI/FS) by Respondents and the payment of certain response costs incurred by the United States at or in connection with the PCE/TCE Northeast Contamination Site (Site) generally having its upgradient portion near several industrial facilities/businesses in the northwestern area of the City of York, Nebraska.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated by the Regional Administrator of EPA Region 7 to the Director, Superfund Division by R7-14-14C and R7-14-14D.

3. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of EPA's findings of facts, conclusions of law, and determinations in Section IV (EPA Findings of Fact) and Section V (EPA Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

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

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

6. Respondents shall ensure that their contractors, subcontractors, and representatives involved in performing Work required by this Settlement receive a copy of this Settlement and comply with this Settlement. Respondents shall be responsible for any noncompliance with this Settlement.

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

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the RI/FS, including, but not limited to, properties within the area in York, Nebraska depicted on Figure 1.

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

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

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXXII.

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

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XI (Property Requirements) (including, but not limited to, the cost of attorney time and any monies paid to secure access in a manner consistent with the definition of "Best Efforts" herein and otherwise consistent with EPA guidance on Entry and Continued Access under CERCLA), Section XV (Emergency Response and Notification of Releases),

Paragraph 94 (Work Takeover), Paragraph 116 (Access to Financial Assurance), Section XVII (Dispute Resolution), and any litigation costs necessary to enforce this Settlement. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site incurred after the date of this Settlement.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

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

"NDEQ" shall mean the Nebraska Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

"Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including Kroy Industries, Inc. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

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

"Parties" shall mean EPA and Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurred or paid at or in connection with the Site through the Effective Date, plus any interest owing on such costs, excluding oversight costs associated with the Administrative Settlement Agreement and Order on Consent for Focused Investigation on November 22, 2016 (November 2016 AOC).

"Proprietary Controls" shall mean easements or covenants running with the land that (i) limit land, water, or other resource use and/or provide access rights and (ii) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

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

"Respondents" shall mean Kroy Building Products, Inc., a Delaware corporation, and Kroy Industries, Inc., a Delaware corporation.

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

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all figures and appendices attached hereto (listed in Section XXX (Integration/Appendices). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the PCE/TCE Northeast Contamination Superfund Site, which comprises the North Parcel and South Parcel as defined herein and locations where releases of hazardous substances from those parcels have come to be located, as generally depicted on the diagram attached as Figure 1.

"The State" shall mean the State of Nebraska.

"Statement of Work" or "SOW" shall mean the statement of work for development of a RI/FS for the Site, as set forth in Appendix 1 to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section XIII (Record Retention).

IV. EPA FINDINGS OF FACT

9. The PCE/TCE Northeast Contamination Site includes an industrial area in northwestern York, Nebraska in the vicinity of the intersection of North Division Avenue and West 25th Street. Apparent groundwater impacts associated with the Site extend southeastward at depth beneath a residential area. Topography in the northern area of York is relatively flat, with a slight downward slope to the east, southeast. See Figure 1.

10. The relevant businesses near the corner of North Division Avenue and West 26th Street are Kroy Building Products, Inc., located at 521 West 26th (the "South Parcel"), and Kroy Industries, Inc., located at 522 West 26th Street (the "North Parcel"). The South Parcel also includes an area of property currently operated by Kroy Building Products, Inc., owned by PG (Multi-16) L.P. to the north of West 26th Street and west of North Division Avenue. The South Parcel and the North Parcel are referred to together as the "Kroy-Related Property." Several buildings historically have been located on the Kroy-Related Property, including: Building 1, the twelve-inch pipe production plant, located at the southwestern corner of the North Parcel, east of the rail spur; Building 2, the ten-inch pipe production plant located at the northeastern corner of the North Parcel, Building 3 on the North Parcel, and the PVC manufacturing plant located on the South Parcel south of 26th Street.

11. The North Parcel was known as Kroy Metal Products from approximately 1956-1978. During that period the facility was owned and operated by the Geis family. The facility's primary business was the manufacture of aluminum tubing and fittings and PVC. In 1978, the Geis family incorporated the business, which became known as Kroy Industries, Inc., a Nebraska corporation. ("Old KII"). In approximately 1978, Old KII acquired the South Parcel from Champion Home Builders Co. ("Champion"). Prior to 1978, the South Parcel was owned and operated as a manufacturing facility by Champion.

12. In 1988, the Kroy-Related Property was purchased by Alcan Aluminum Corporation (Alcan) from Old KII. Alcan's operation was known as Alcan Pipe, a division of Alcan. Alcan owned and operated the Kroy-Related Property until 1994. In 1994, Alcan leased the Kroy-Related Property to an entity now known as Kroy Building Products, Inc. (KBP), which then operated it.

13. In 1998, Alcan conveyed the Kroy-Related Property to KBP. Contemporaneously, KBP conveyed the North Parcel to Kroy Industries, Inc. while continuing to own and operate the South Parcel. Kroy Industries, Inc., has owned and operated the North Parcel since 1998. KBP has operated the South Parcel since 1998. It owned the South Parcel from 1998 until 2004, when KBP entered a sale-leaseback arrangement with PG (Multi -16) LP in 2004. PG (Multi-16) LP is the current owner of the South Parcel.

14. Trichloroethylene (TCE) and 1,1,1-trichloroethane (1,1,1-TCA) were reportedly used at the Kroy-Related Property from an undetermined starting time until 1990.

15. In January 1990, the Nebraska Department of Health and Human Services identified low concentrations of volatile organic compounds (VOCs) in multiple York Public Water Supply (PWS) wells. Based on these findings, the Nebraska Department of Environmental Quality conducted a preliminary assessment (PA) in 1990 and site investigation (SI) in 1991. In 1996 EPA performed an expanded site investigation (ESI), and NDEQ also performed an expanded site inspection in 2011. The results of these investigations identified numerous public and private drinking water supply wells that exhibited concentrations of tetrachloroethylene (PCE) and TCE. The investigations also identified PCE and TCE in soil gas, soil, and groundwater at the Facility near the production areas located in Building 1; low levels of 1,1,1-TCA in soil and groundwater; and PCE in soil samples near Building 2.

16. In 1991, EPA conducted a removal action providing bottled water to residents potentially exposed to contaminated drinking water.

17. In 1996, EPA completed an Expanded SI, which included collecting groundwater samples from the thirteen York PWS wells, collecting soil samples from sixteen facilities, and issuing questionnaires to at least nine businesses regarding the chemicals used at facilities near the Site. Cis-1,2-dichloroethene (cis-1,2-DCE), a degradation product of PCE and TCE, was detected in soil at the Kroy-Related Property 1 to 2 feet below ground surface (bgs) and 16 to 18 feet (bgs) at concentrations of 29 micrograms per kilogram (µg/kg) and 17 µg/kg, respectively.

18. In 1996 and 1998, a Baseline Investigation report and an Exit Investigation report were prepared with respect to the Kroy-Related Property in connection with a lease agreement between Alcan and KBP. Soil and groundwater sampling was conducted during each investigation. PCE was detected in three out of sixteen soil samples in 1995 and one out of sixteen soil samples in 1998. The 1995 Baseline Investigation noted that subsurface soils exhibited odors to a depth of 28 feet bgs at select borings in the area west of Building 1 and 22 feet bgs in the gravel parking lot area east of Building 1. The 1995 Baseline Investigation also documented that groundwater samples from five out of nine sampling locations contained 1,1-dichloroethane (1,1-DCE), 1,1,1-TCA, and PCE. TCE was detected in four out of nine sampling locations during the Baseline Investigation. Similar results were documented in the 1998 Exit Investigation: Groundwater samples from five out of nine sampling locations had detections of 1,1,1-TCA and PCE; four out of nine sampling locations also had detections of TCE; and three out of nine sampling locations had detections of 1,1-DCE. The groundwater table is approximately 65 feet bgs. Neither the Baseline Investigation nor the Exit Investigation reports attempted to identify or characterize the source(s) of groundwater impacts.

19. In March 2010, NDEQ sent a request for federal action letter to EPA. In this request and in following correspondence, NDEQ requested that EPA conduct a CERCLA removal action to reduce or eliminate unacceptable human exposures to contaminated groundwater at the Site.

20. In 2010, EPA began a time-critical removal action to continue sampling private drinking water wells and, where necessary, provide affected residences and businesses with either (1) a permanent connection to the York municipal water system, or (2) installation of whole-house filtration treatment units. The removal action is ongoing and consists of routine private well sampling and a vapor intrusion investigation.

21. The Site was proposed for inclusion on the National Priorities List (NPL) pursuant to CERCLA Section 105, 42 U.S.C. § 9605, in December 2013 and became final on the NPL in May 2014.

22. EPA transmitted a general notice letter to Respondent Kroy Industries, Inc. on August 19, 2014. A Special Notice Letter was transmitted to Respondent Kroy Industries, Inc. on April 21, 2016. EPA and Kroy Industries, Inc. subsequently entered into an Administrative Settlement Agreement and Order on Consent for Focused Investigation on November 11, 2016 (November 2016 AOC).

23. Special Notice Letters concerning the Work covered in this Settlement were transmitted to the Respondents by letter dated September 19, 2018.

24. The focused investigation work completed under the November 2016 AOC consisted of geologic logging via electrical conductivity, hydraulic profile tool, and membrane interface probe (EC/HPT/MIP), groundwater sampling and soil sampling within the study area to further characterize the site and prepare an updated conceptual site model. This work included, among others, sampling of both the North Parcel and the South Parcel. TCE and PCE were detected in groundwater samples at multiple intervals collected at both the North Parcel and the South Parcel during the Focused Investigation conducted pursuant to the November 2016 AOC. TCE and PCE concentrations were present in certain locations in concentrations exceeding their respective MCLs. The focused investigation identified an area used by Champion Home Builders Co. in the vicinity of elevated groundwater concentrations on the South Parcel.

25. The contamination found at the Site includes PCE, TCE, 1,1-DCE, cis-1,2-DCE, and 1,1,1-TCA

26. By letter date March 13, 2019, EPA provided notice of completion of the Focused Investigation work.

V. EPA CONCLUSIONS OF LAW AND DETERMINATIONS

27. Based on the EPA Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The PCE/TCE Northeast Contamination Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Each Respondent is a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent Kroy Building Products, Inc. is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondent Kroy Industries, Inc. is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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

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

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

VI. SETTLEMENT AGREEMENT AND ORDER

28. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

29. Respondents have retained, and EPA has not disapproved, Arcadis U.S., Inc., Olsson Associates, and Haley & Aldrich, Inc. as their contractors to perform the Work.

30. Respondents have designated, and EPA has not disapproved, the following individuals as Project Coordinators:

Tina Lloyd
Arcadis U.S. Inc.
8275 Rosehill, Suite 350
Lenexa, Kansas 66215
Phone: (913) 998-6916
tina.lloyd@arcadis.com

Jason Byler
Olsson Associates
601 P Street, Suite 200
Lincoln, Nebraska 68508
Phone: (402) 458-5078
jbyler@olssonassociates.com

Michael Basel
Haley & Aldrich, Inc.
11020 King Street | Suite 450
Overland Park, KS 66215

Phone (913) 693-1900
MBasel@haleyaldrich.com

31. The Project Coordinators shall be responsible for administration of all actions by Respondents required by this Settlement. To the extent possible, a Project Coordinator shall be present on Site or readily available during Site work. Respondents shall have the right, subject to this Paragraph, to change their designated Project Coordinator(s). Respondents shall notify EPA 14 days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice. EPA retains the right to disapprove such newly-designated Project Coordinator(s). If EPA disapproves of such newly-designated Project Coordinator(s), Respondents shall, upon receipt of written notice including an explanation for the disapproval, retain a different Project Coordinator(s) and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within 14 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator(s) shall constitute notice or communication to all Respondents

32. EPA has designated Owens Hull of EPA Region 7's Superfund Division as its Remedial Project Manager (RPM). Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the RPM at the United States Environmental Protection Agency, Region 7, SUPR/FFPC, 11201 Renner Boulevard, Lenexa, Kansas 66219. Mr. Hulls' phone number is (913) 551-7226 and his email is hull.owens@epa.gov. EPA will notify Respondents of a change of its designated RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement shall be directed to the EPA RPM in accordance with Paragraph 41.a.

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

VIII. WORK TO BE PERFORMED

34. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after the earlier of (a) Respondents receiving notification from EPA of the modification, amendment, or replacement, or (b) the effective date of the modification, amendment or replacement and Respondents notifying EPA they intend to follow the current regulation or guidance.

35. Activities and Deliverables.

Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations

and Feasibility Studies under CERCLA" (RI/FS Guidance), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) scope shall be consistent with the SOW and shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

36. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section IX (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section IX (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

37. Modification of the RI/FS Work Plan.

a. If at any time during the RI/FS process, Respondents identify a need for additional data for the performance of the Work, Respondents shall submit a memorandum documenting the need for additional data to EPA's RPM within 30 days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's RPM by telephone by the end of the first business day following the day of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify or amend the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval, provided that any such EPA modifications or direction to modify shall be consistent with the scope of the SOW. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA

determines that such actions are necessary for a complete RI/FS, and provided such actions and/or modifications are consistent with the scope of the SOW.

d. Respondents shall confirm their willingness to perform the additional work in writing to EPA within 14 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XVII (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

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

f. Nothing in this Paragraph shall be construed to limit EPA's authority to seek to require performance of further response actions at the Site in a proceeding other than under this Settlement.

38. Off-Site Shipments.

a. Respondents may ship hazardous substances, pollutants and contaminants associated with the Work to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material associated with the Work to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's RPM of any major changes in the out-of-state shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) associated with the Work to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA

hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

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

40. Periodic Progress Reports. In addition to the deliverables set forth in this Settlement, Respondents shall submit periodic progress reports to EPA by the 20th day of the following month, or on longer cycles as may otherwise be approved by EPA. With respect to the preceding reporting period, these progress reports shall:

a. describe the actions that have been taken to comply with this Settlement;

b. include all validated results of sampling and tests and all other validated data received by Respondents;

c. describe Work planned for the next two months (or such other cycle as may be approved by EPA) with schedules relating such Work to the overall project schedule for RI/FS completion; and

d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

41. Submission of Deliverables

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's RPM and to the State at:

Owens Hull
Superfund Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7226
Fax: (913) 551-9226
hull.owens@epa.gov

Laurie S. Brunner, P.G.
Land Management Division
Nebraska Department of Environmental Quality
1200 N Street

P.O. Box 98922
Lincoln, NE 68509-8922
Phone: (402) 471-2214
laurie.brunner@nebraska.gov

Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 41.b. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 11" by 17", Respondents shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

42. Approval of Deliverables

a. Initial Submissions

(1) After review of any deliverable that is required to be submitted for approval pursuant to this Settlement or the attached SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions consistent with the scope of the SOW; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify, consistent with the scope of the SOW, the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 42.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 42.a(1), Respondent shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (i) approve, in whole or in part, the resubmission; (ii) approve the resubmission upon specified conditions; (iii) modify the resubmission; (iv) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (v) any combination of the foregoing. Any EPA notice under this subparagraph shall be consistent with the scope of the SOW.

c Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 42.a (Initial Submissions) or 42.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XIX (Stipulated Penalties) for violations of this Settlement.

43. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

44. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report (RI Report) or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

45. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of the deliverables outlined in Section V of the Statement of Work (Appendix 1) Schedule of Deliverables/Milestones, with the exception of Health and Safety Plans. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

46. For all remaining deliverables not listed above in Paragraph 45, Respondents shall proceed will all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

47. Material Defects. If an initially submitted or resubmitted plan, report, or other material contains a material defect and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 42.a (Initial Submissions) or 42.b (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violations as provided in Section XIX (Stipulated Penalties). For purposes of this paragraph, a material defect in a deliverable shall mean the deliverable omits significant information this Settlement, the SOW, or the RI/FS Work Plan clearly specifies must be included. EPA shall provide one notice and allow Respondents one 7 day period to cure any alleged material defect before Respondents are deemed in violation of this Settlement for failure to submit such deliverable timely and adequately.

48. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specific time period nor the absence of comments shall be construed as approval by EPA. However, if EPA fails to provide approval or disapproval on any submission and such failure prevents Respondents from meeting one or more deadlines in a plan approved by EPA pursuant to this Settlement, Respondents shall not be deemed in noncompliance with this Settlement.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

49. Quality Assurance. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/b-04/900A-900C (March 2005). Respondents shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the QAPP, and guidance identified therein. Respondents shall assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA. Sampling data generated consistent with any Quality Assurance Project Plan or comparable plan approved by EPA shall be deemed in compliance with this Settlement.

50. Laboratories. Through inclusion of contractual provisions in Respondents' or Respondents' contractors' agreements with laboratories, Respondents shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth

in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (https://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (https://www.epa.gov/ttnamti1/airtox.html).

a. Upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

b. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

c. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

51. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Settlement is effective, shall be submitted to EPA in the next periodic progress report as described in Paragraph 40. EPA will make available to Respondents data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Upon request, Respondents shall provide split or duplicate samples to EPA and the State or their authorized representatives, provided that such representative(s) are present in the field to receive such split or duplicate samples when the sampling is scheduled to occur and that such representative(s) are equipped with the requisite containers or other materials necessary for receiving such samples. Respondents shall notify EPA and the State not less than

30 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples, consistent with the work required under the Work Plan, that EPA or the State deems necessary. Upon request, EPA and the State shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work.

c. Respondents shall submit to EPA and the State, in the next periodic progress report as described in Paragraph 40 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

d. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the periodic progress report containing the data, or within 30 days after the potential objected-to-use of such data becomes known to Respondents, whichever is later.

XI. PROPERTY REQUIREMENTS

52. Agreements Regarding Access and Non-Interference. Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the United States, providing that such Non-Settling Owner shall, and Owner Respondent, with respect to Owner Settling Respondent's Affected Property, shall: (i) provide the United States, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 52.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Work.

a. Access Requirements. The following is a list of activities for which access may be required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the State;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 94 (Work Takeover);

(8) At Owner Respondent's Affected Property, inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XII (Access to Information);

(9) Assessing Respondents' compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

53. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access but only if such payment is necessary to provide just compensation to compensate for an actual, out-of-pocket expense or loss directly attributable to the access or for property damage or actual economic loss reasonably expected to result from the grant of access. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, provided such consideration or compensation is consistent with the definition of "best efforts" above and otherwise consistent with "Entry and Continued Access under CERCLA," OSWER Directive 9829.2 (June 1987), constitute Future Response Costs to be reimbursed under Section XVI (Payment of Response Costs).

54. If EPA determines in a decision document prepared in accordance with the NCP that ICs in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such ICs.

55. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

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

XII. ACCESS TO INFORMATION

57. Respondents shall provide to EPA and the State, upon request, copies of all non-privileged records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

58. Privileged and Protected Claims.

a. Respondents may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 58.b, and except as provided in Paragraph 58.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA and the State notice of the assertion and upon EPA's written request, with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Work, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record generated to perform the Work that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

59. Business Confidential Claims. Respondents may assert that all or part of a Record provided to EPA and the State under this Section or Section XIII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA

will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

60. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

61. Until 10 years after EPA provides Respondents with notice, pursuant to Section XXIX (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary. Respondents may satisfy their obligations related to their contractors' and subcontractors' Records retention by requiring their contractors and subcontractors to send all Records they are required to maintain under this paragraph to Respondents at the conclusion of any contractual relationships with Respondents.

62. At the conclusion of the document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 58 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA or the State.

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

XIV. COMPLIANCE WITH OTHER LAWS

64. Nothing in this Settlement limits Respondents obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

65. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's RPM or, in the event of his unavailability, the Regional Duty Officer at (913) 281-0991 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

66. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, Respondents shall immediately notify EPA's RPM and EPA's Regional Duty Officer at (913) 281-0991 and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

XVI. PAYMENT OF RESPONSE COSTS

67. Payment for Past Response Costs.

a. Within 60 days after the Effective Date, Respondents shall pay to EPA $610,523.80 in partial satisfaction of Past Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A7T6 and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that payment has been made to EPA's RPM, Owens Hull at hull.owens@epa.gov or by mail to 11201 Renner Boulevard, Lenexa, Kansas, 66219, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number A7T6 and the EPA docket number for this action.

c. Deposit of Past Response Costs Payments. The total amount to be paid by Respondents pursuant to Paragraph 67.a shall be deposited by EPA in the PCE/TCE Northeast Contamination Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. The remainder of past responses costs transmitted with the September 19, 2018 Special Notice Letter and the ATSDR costs incurred prior to the date of the Special Notice but not included in the costs transmitted in the September 19, 2018 Special Notice Letter, totaling $373,055.04, will not be deemed an account receivable pursuant to this Settlement and will therefore not accrue interest as an uncollected debt.

68. Payments for Future Response Costs. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 70 (Contesting Future Response Costs), and in accordance with Paragraphs 67.a and 67.b (Payments for Past Response Costs).

b. Deposit of Future Response Costs Payments. The total amount to be paid by Respondents pursuant to Paragraph 68.a shall be deposited by EPA in the PCE/TCE Northeast Contamination Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the PCE/TCE Northeast Contamination Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

69. Interest. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue 30 days from the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of Respondents' receipt of the bill. The Interest shall accrue through the date of Respondents' 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 Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 81 (Stipulated Penalties - Work).

70. Contesting Future Response Costs. Respondents may initiate the procedures of Section XVII (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 68 if they determine that EPA has made a mathematical or other error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 68. Respondents shall send to EPA's RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs. If EPA prevails in the dispute, within 15 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 68. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 68. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. DISPUTE RESOLUTION

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

72. Informal Dispute Resolution. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 30 days after they are notified of such action. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (Negotiation Period). The Negotiation Period may be extended by mutual written agreement. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

73. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA's RPM. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute that is consistent with the scope of this Settlement to Respondents. Such decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with such decision, whichever occurs.

74. Except as provided in Paragraph 70 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 84, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, unless waived in whole or in part by EPA, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XVIII. FORCE MAJEURE

75. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the reasonable control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" means exercising the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, and includes using best efforts to reasonably anticipate a potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the

delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 7, within 7 days of when Respondents first knew that the event was reasonably likely to cause a delay. Within 14 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or reasonably should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 75 and whether Respondents have exercised their best efforts under Paragraph 75, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

77. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation, unless the performance of the delayed obligation is necessary to the timely performance of such other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

78. If Respondents elect to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 75 and 76. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

79. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XIX. STIPULATED PENALTIES

80. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 81 and 82 for failure to comply with any of the requirements of this Settlement specified below, unless excused under Section XVIII (Force Majeure) and further provided that, with respect to the first instance Respondent would otherwise become liable for stipulated penalties, such penalties will be excused if Respondent cures the violations within 5 days of receipt of notice of such violation from EPA. "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

81. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any material noncompliance with this Settlement, or failure to perform the Work, except as provided in Paragraph 84:

Penalty Per Violation Per Day	Period of Noncompliance
$ 250	1st through 14th day
$ 500	15th through 30th day
$ 1,000	31st day and beyond

82. Stipulated Penalty Amounts - Payments, Plans, Reports, and Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate payment, reports, or other plans or deliverables pursuant to this Settlement or Work Plan:

Penalty Per Violation Per Day	Period of Noncompliance
$125	1st through 14th day
$ 250	15th through 30th day
$ 500	31st day and beyond

83. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 94 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $100,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 94 (Work Takeover) and 116 (Access to Financial Assurance).

84. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 73 of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

86. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XVII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 68 (Payments for Future Response Costs).

87. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 80 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 86 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

88. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

89. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of

this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 94 (Work Takeover).

90. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XX. COVENANTS BY EPA

91. Except as provided in Section XXI (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs actually paid to EPA, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

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

93. The covenant not to sue set forth in Section XX (Covenants by EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for Past Response Costs not actually paid to EPA pursuant to this Agreement;

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

e. criminal liability;

f. liability for violations of federal or state law that occur during or after implementation of the Work;

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

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

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

94. Work Takeover.

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Respondents. Any Work Takeover Notice issued by EPA (which writing may be delivered by email to the Respondents' designated Project Coordinators) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 94.a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 94.b. Funding of Work Takeover costs is addressed under Paragraph 116 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 94.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 94.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 73 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY RESPONDENTS

95. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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; or

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Nebraska Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

Nothing in this Settlement shall be construed to waive, and Respondents expressly reserve, any claim against any governmental entity or agency that may be liable for the Site under Section 107 or 113 of CERCLA, Section 7002(a) of RCRA, or other federal or state statute or common law.

96. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XXI (Reservations of Rights by EPA), other than in Paragraph 93.a (liability for failure to meet a requirement of the Settlement), 93.ee (criminal liability), or 93.ff (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

98. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

XXIII. OTHER CLAIMS

99. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by

Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

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

101. No action or decision by EPA pursuant to this Settlement 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).

XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

102. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement 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).

103. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Future Response Costs.

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

105. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 30 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters covered by this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

106. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XX (Covenants By EPA).

107. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Paragraphs 67 (Payment for Past Response Costs) and, if any, Section XIX (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 103 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXV. INDEMNIFICATION

108. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

110. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

111. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXIX (Notice of Completion of Work), commercial general liability insurance with limits of $1 million per occurrence, automobile insurance with combined limits of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the requirement commercial general liability and automobile liability limits, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date until receipt of the Notice of Completion of Work (Section XXIX). In addition, for the duration of the Work, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the site name, city, and state and the EPA docket number for this action.

XXVII. FINANCIAL ASSURANCE

112. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $1,000,000 (Estimated Cost of the Work), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond 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. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

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

e. A demonstration by one or more Respondents that each such Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of a Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

113. Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a letter of credit prepared in accordance with Paragraph 112. Within 60 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA RPM, and the EPA, Region7, Regional Financial Officer, 11201 Renner Boulevard, Lenexa, Kansas, 66219.

114. If Respondents provide financial assurance by means of a demonstration or guarantee under Paragraph 112.e or 112.f, the affected Respondents shall also comply and shall ensure that their guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the

notification of EPA no later than 30 days, in accordance with Paragraph 115, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondents agree that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 112.e or 112.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 112.e or 112.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

115. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph 117 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondents to complete the Work in accordance with the terms of this Settlement.

116. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 94.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 116.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the

cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 116.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 94.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 112.e or 112.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 116 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the PCE/TCE Northeast Contamination Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 116 must be reimbursed as Future Response Costs under Section XVI (Payment of Response Costs).

117. Modification of Amount, Form, or Terms of Financial Assurance. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 113 and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVII (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 113.

118. Release, Cancellation, or Discontinuation of Financial Assurance. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXIX (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation;

or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under to Section XVII (Dispute Resolution).

XXVIII. MODIFICATION

119. EPA's RPM may modify any plan or schedule in writing or by oral direction, provided such modification is consistent in scope with this Settlement and the SOW. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

120. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' Project Coordinator(s) shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph 119.

121. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

122. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and record retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies that is consistent with the scope of this Settlement and the SOW, and require that Respondents modify the RI/FS Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

XXX. INTEGRATION/APPENDICES

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

a. "Figure 1" is the description and/or map of the Site.

b. "Appendix 1" is the SOW.

c. "Appendix 2" is the financial assurance.

XXXI. ADMINISTRATIVE RECORD

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

XXXII. EFFECTIVE DATE

125. This Settlement shall be effective on the date it has been signed by all Parties.

The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to bind the parties they represent to this document.

Agreed this 16TH day of May, 2019.

For Respondent Kroy Building Products, Inc.

By Todd Harbour

Name TODD HARBOUR

Title VP, ENVIRONMENTAL AFFAIRS

Agreed this 16th day of May, 2019.

For Respondent Kroy Industries, Inc.

By Philip S. Seevers

Name Philip S Seevers

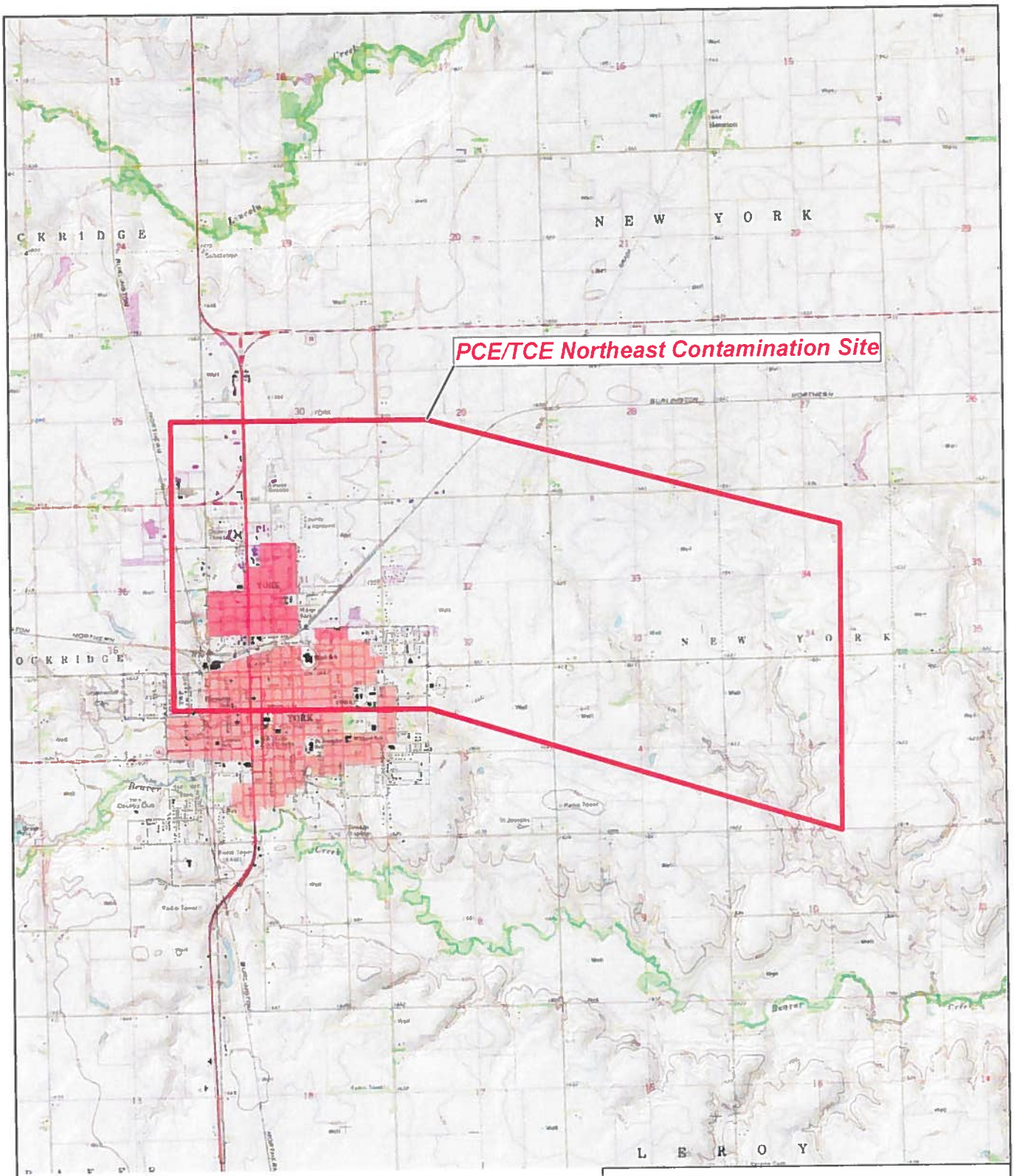
Title CEO

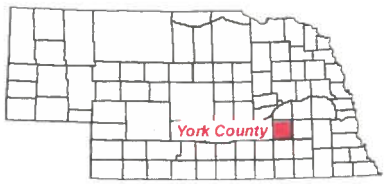
It is so ORDERED and Agreed this 17 day of May, 2019.

Mary P. Peterson
Director
Superfund Division
U.S. Environmental Protection Agency, Region 7

Kristen Nazar
Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

EFFECTIVE DATE: 5/17/2019





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Miles

Source: USGS York North NE 7.5 Minute Topo Quad, 1980
USGS York South NE 7.5 Minute Topo Quad, 1978

PCE/TCE Northeast Contamination Site
York, Nebraska

Appendix 1
Site Location Map

TETRA TECH

Date: 1/30/2014 Drawn By: Nick Wiederholt Project No: X9025 14 0055 000

X:\G\9025\0055\000 Projects\mxd\Figure1.mxd

*This figure is only a general depiction. It is not an indication of whether any hazardous substances or chemicals of potential concern are present at, under, or near any particular property, nor is it intended to define the Site boundaries or alter the scope of Work provided for in this Settlement.

APPENDIX 1

STATEMENT OF WORK FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

PCE/TCE Northeast Contamination Site
York, York County, Nebraska

I. BACKGROUND INFORMATION

The PCE/TCE Northeast Contamination Site, or Site, includes an industrial area in northwestern York, Nebraska in the vicinity of the intersection of North Division Avenue and West 25th Street. Apparent groundwater impacts extend southeastward at depths beneath a residential area. Topography in the northern York area is relatively flat, with a slight slope to the east/southeast. Numerous investigations have been conducted at the Site beginning in the early 1990s. Volatile organic compounds, or VOCs, including tetrachloroethene, or PCE, trichloroethene, or TCE, and 1,1,1-trichloroethane, or 1,1,1-TCA, have been detected in groundwater and have impacted private drinking water wells and York Public Supply Wells. Actions have been taken to prevent exposure from such wells. Groundwater contaminants have been detected to the east/southeast for approximately 3 miles.

The Site was proposed for National Priority Listing, or NPL, in December 2013 and was placed on the NPL in May 2014.

In November 2016, the Environmental Protection Agency, or EPA, and Kroy Industries Inc. entered into an Administrative Settlement Agreement and Order on Consent, or AOC, to conduct a Focused Investigation, or FI. The work completed under the AOC consisted of geologic logging (electrical conductivity/hydraulic profile tool/membrane interface probe), groundwater sampling and soil sampling within the FI study area to further characterize the site and prepare an updated conceptual site model, or CSM.

The contaminants of potential concern, or COPCs, for the Site are the following VOCs: PCE, TCE, 1,1,1-TCA, cis-1,2-dichloroethene, or cis-1,2-DCE, 1,1-dichloroethene, or 1,1-DCE, carbon tetrachloride, or CCl_4, and chloroform, or $CHCl_3$. The final list of contaminants of concern, or COCs, will be determined at the conclusion of the Human Health Risk Assessment Process, or HHRA.

II. OBJECTIVE AND SCOPE

The purpose of this Statement of Work, or SOW, is to set forth the requirements for completing the Remedial Investigation, or RI, and performing the Feasibility Study, or FS, to support a Record of Decision, or ROD, for the Site. The purpose of the RI/FS is to determine the nature and extent of hazardous substances, pollutants or contaminants at the Site and to develop and evaluate remedial alternatives, as appropriate, building on previous investigations and otherwise meeting the scope-related provisions of this SOW. The Respondents shall furnish all necessary personnel, materials and services needed for, or incidental to, performing the RI/FS, except as otherwise specified herein. The Respondents will conduct the RI/FS in accordance with the Guidance for Conducting RI/FS under the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, (U.S. EPA, October 1988). As specified in CERCLA Section 104(a)(1), as amended, the EPA, with assistance from

the Nebraska Department of Environmental Quality, or NDEQ, will provide oversight of Respondent's activities throughout the RI/FS work, including all field activities. All deliverables, as outlined in the Schedule of Deliverables/Milestones, will be submitted to the EPA and two hard copies (one bound and one unbound) to the NDEQ concurrently for review.

Groundwater contamination consisting predominantly of PCE and TCE has impacted a number of private drinking water wells within northern York. Currently known potential exposures associated with impacted groundwater have been controlled through an EPA time-critical removal action, which now consists of routine private well sampling. The goal of this RI/FS is to develop data necessary to support the selection of an approach for site remediation and then to use this data to result in a well-supported ROD.

The specific RI/FS activities to be conducted at the Site are segregated into 12 separate tasks.

- Task 1 – Project Planning and Support
- Task 2 – Field Investigations
- Task 3 – Sample Analysis
- Task 4 – Data Evaluation
- Task 5 – Vapor Intrusion
- Task 6 – Human Health Risk Assessment and Ecological Risk Assessment
- Task 7 – Remedial Investigation Report(s)
- Task 8 – Treatability Study/Pilot Testing
- Task 9 – Remedial Alternatives Development and Screening
- Task 10 – Feasibility Study
- Task 11 – Feasibility Study Report(s)
- Task 12 – Progress Reports

III. GENERAL

This SOW is provided as a format for the Respondents to structure their proposed approach. The Respondents should select and develop the appropriate components found in the SOW to successfully meet the requirements of this RI/FS which will result in a well-supported ROD. A summary of the major deliverables and proposed schedule for submittals is included in Section V of this SOW.

The EPA provides oversight of Respondents activities throughout the RI/FS, with assistance from the NDEQ. The EPA review and approval of deliverables is a tool to assist this process and to satisfy, in part, the EPA's responsibility to provide effective protection of human health, welfare, and the environment. The EPA also reviews deliverables to ensure that the RI/FS achieves its goal of a well-supported ROD and that its performance and operations requirements have been met. Acceptance of deliverables by the EPA does not relieve the Respondents from responsibility for the adequacy of the deliverables or their professional responsibilities.

The remainder of this SOW describes the work elements associated with the RI/FS.

IV. TASK ORDER TASKS

TASK 1 PROJECT PLANNING AND SUPPORT

Respondents shall plan the specific RI/FS activities that will need to be conducted. As part of this planning effort, the Respondents will compile existing information (e.g., topographic maps, aerial photographs, data collected as part of the NPL's listing process, data collected as part of the removal action and data collected during the FI. Based on this information (and any other available data), the Respondents will prepare a Site background summary of the information below and include it in the RI/FS Work Plan.

1.) *Local Regional Summary* – A summary of the Site location, pertinent area boundary features and general Site physiography, hydrogeology, geology and the locations(s) of any nearby drinking supply wells.

2.) *Nature and Extent of Problem* – A summary of the actual and potential on-site and off-site health and environmental effects posed by any contamination at the Site. Emphasis should be on providing a conceptual understanding of the sources of contamination, potential release mechanisms, potential routes of migration and potential human and environmental receptors.

3.) *History of Regulatory and Response Actions* – A summary of any previous response actions conducted by local, State, Federal or private parties.

4.) *Preliminary Site Boundary* – A preliminary site boundary that defines the initial area(s) of the remedial investigation is provided in the attached Figures 1 and 2, which will also be included in the RI/FS Work Plan.

5.) *Preliminary Conceptual Site Model* – A preliminary CSM shall be developed based on available historical information. The CSM shall include figures such as plume maps, cross sections and geographic information system overlays that depict the levels of contamination in each media. The preliminary CSM shall be submitted with the RI/FS Work Plan. The CSM shall be updated periodically as additional data and information is collected.

During this task and concurrent with preparation of the RI/FS Workplan, Respondents will meet with the EPA to discuss the following:

1.) The proposed scope of the project and the specific investigative and analytical activities that will be required.

2.) Preliminary remedial action objectives, or RAOs, and general response actions.

3.) Potential remedial technologies and the need for usefulness of treatability studies.

4.) Potential Applicable or Relevant and Appropriate Requirements, or ARARs, associated with the location and contaminants of the Site and the potential response actions being contemplated.

Incorporating input from the project planning task, the Respondents will develop (1) the specific work plan to meet the objectives of the RI/FS and (2) initiate subcontractor procurement and coordination with analytical laboratories. The RI/FS Work Plan provides a project description and outlines technical approach, complete with corresponding personnel requirements, activity schedules, deliverable due dates for each of the specified tasks and includes a sampling and analysis plan, or SAP, supplement (composed of the field sampling plan, or FSP, and the quality assurance project plan, or QAPP supplements); and a health and safety plan, or HASP, or supplement. Work plans for a Vapor Intrusion, or VI, evaluation, and a human health risk assessment, or HHRA, and ecological risk assessment, or ERA, will be submitted to the EPA as separate deliverables. In accordance with Section V of this SOW, Schedule for Deliverables/Milestones, the Respondents shall submit draft RI and FS Planning Documents listed below to the EPA. Respondents shall prepare the RI/FS planning documents as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," October 1988. The EPA will review the work plan in accordance with Section IX of the AOC. The components of the RI/FS Work Plan are described below.

RI/FS Work Plan – The Respondents will prepare a RI/FS Work Plan which will consist of the following:

The RI/FS Work Plan shall present the initial evaluation of existing data and background information performed during the scoping process, including (1) an analysis and summary of the site background and the physical setting; (2) an analysis and summary of previous response actions; (3) presentation of the preliminary CSM which includes an analysis and summary of the nature and extent of contamination and a preliminary assessment of the human health and environmental impacts; and (4) the preliminary identification of general response actions and alternatives and the data needed for the evaluation of the alternatives. The RI/FS Work Plan defines the scope and objectives of the RI/FS, the SAP supplement provides the detailed descriptions of the work to be conducted.

Sampling and Analysis Plan Supplement – The SAP previously approved and used to conduct the FI will be used to conduct the RI/FS. The Respondents will prepare a SAP Supplement that addresses any additional or modified activities planned for the RI/FS. The previously-approved SAP and SAP supplement will meet requirements for the following:

Field Sampling Plan Supplement – The FSP previously approved and used to conduct the FI will be used to conduct the RI/FS. The Respondents will prepare a FSP Supplement that addresses any additional or modified activities planned for the RI/FS. The FSP and FSP supplement should specify and outline all necessary activities to obtain additional Site data. It should contain an evaluation explaining what additional data are required to adequately characterize the Site, conduct a HHRA, and ERA and support the evaluation of remedial technologies in the FS. The FSP should clearly state sampling objectives; necessary equipment; sample types, locations, and frequency; analyses of interest; and a schedule stating when events will take place and when deliverables will be submitted. All

sampling and analysis performed shall conform to the EPA direction, approval, and guidance regarding sampling, quality assurance/quality control, or QA/QC, data validation and chain of custody procedures.

Quality Assurance Project Plan Supplement – The QAPP previously approved and used to conduct the FI will be used to conduct the RI/FS. As needed, the Respondents will prepare a QAPP Supplement that addresses any additional or modified activities planned for the RI/FS. The QAPP and QAPP supplement should address all types of investigations and shall be conducted in accordance with "Guidance for Quality Assurance Project Plans (QA/G-5), U.S. EPA, December 2002." The QAPP shall include the following discussions:

1. A project description (should be duplicated from the work plan).

2. A project organization chart illustrating the lines of responsibility of the personnel involved in the sampling phase of the project.

3. Data Quality Objectives, or DQOs, for data such as the required precision and accuracy, completeness of data, representativeness of data, comparability of data, and the intended use of collected data.

4. Sample custody procedures during sample collection, in the laboratory, and as part of the final evidence files.

5. The type and frequency of calibration procedures for field and laboratory instruments, internal quality control checks, and quality assurance performance audits and system audits.

6. Preventative maintenance procedures and schedule and corrective action procedures for field and laboratory instruments.

7. Specific procedures to assess data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters.

8. Data documentation and tracking procedures.

Health and Safety Plan Supplement – The HASP previously submitted and used to conduct the FI will be used to conduct the RI/FS. As needed, the Respondents will prepare a HASP Supplement that addresses any additional or modified activities planned for the RI/FS. The HASP and HASP supplement will be based on Site conditions to protect personnel involved in Site activities and the surrounding community. The plan should address all applicable regulatory requirements contained in 20 CFR 1910.120(i)(2) – Occupational Health and Safety Administration, Hazardous Waste Operations and Emergency Response, Interim Rule, December 19, 1986; U.S. EPA Order 1440.2 – Health and Safety Requirements for Employees Engaged in Field Activities; U.S. EPA Order 1440.3 – Respiratory Protection; U.S. EPA Occupational Health and Safety Manual; and U.S. EPA Interim Standard Operating Procedures (September, 1982). The plan should provide a site background discussion and describe personnel responsibilities, protective equipment, health and safety procedures and protocols,

decontamination procedures, personnel training, and type and extent of medical surveillance. The plan should identify problems or hazards that may be encountered and how these are to be addressed.

Procedures to be implemented during RI/FS field activities to protect third parties, such as visitors or the surrounding community, should also be provided, and will include, but not limited to, the use of exclusion zones, utility location, and traffic control. The EPA reviews, but does not "approve" the HASP.

The following work plans will be submitted as separate deliverables:

Human Health and Ecological Risk Assessment Work Plan – The Respondents will prepare a separate HHRA and ERA work plan which will describe the proposed exposure assessment and toxicity assessment approaches for the HHRA and ERA for the Site. The information provided in the work plan shall be based on the best available Site information, risk assessment guidance and professional judgment. The Risk Assessment must be done in accordance with the EPA risk assessment guidance, procedures, assumptions, methods, and formats.

Vapor Intrusion Work Plan - The Respondents will prepare a separate VI Work Plan/Evaluation Report, after completion of the first phase of RI field work, which will describe the proposed approach to evaluating VI. Respondents will summarize and evaluate FI data, existing EPA data, other available data, and Phase I RI data to propose to EPA whether additional VI investigation is warranted. Additional investigation will be conducted if COPC concentrations in soil gas or shallowest groundwater within 100 feet of either occupiable structures or identified substantial preferential pathways (including underground utility corridors or shallow permeable lenses) exceed USEPA Vapor Intrusion Screening Level (VISL) indicative of the potential for VI into indoor air and if the relevant area has not been previously investigated for VI. Currently, EPA Region 7 uses a removal management level for TCE in a residential/commercial setting of 2.0 $\mu g/m^3$/6.0 $\mu g/m^3$, respectively, which are Region 7 values not reflected in the VISL calculator. These values are subject to change based on updated toxicity values. If EPA agrees that the VI evaluation indicates that additional investigation is not required, a memorandum (i.e., VI Evaluation Report) will be provided; however, if additional investigation is needed, then the work plan proposing the VI sampling approach will be provided to the EPA. The information provided shall be based on the best available Site information and professional judgment. Any VI Investigation will be done in accordance with the EPA guidance, procedures, assumptions, methods and formats.

TASK 2 FIELD INVESTIGATION

The Respondents will implement the RI/FS Work Plan to further characterize the Site and to evaluate the actual or potential risk to human health and the environment posed by the Site. Investigation activities will focus on problem definition and result in data of adequate technical content to evaluate potential risks and to support the development and evaluation of remedial alternatives during the FS. The aerial extent of investigation will be finalized during the RI.

Site investigation activities will follow the RI/FS Work Plan developed in Task 1. Strict chain-of-custody procedures will be followed, and all sample locations will be identified on a Site map. The

Respondents will provide management and quality control review of all activities conducted under this task. Activities anticipated for this Site are as follows:

1.) *Surveying and Mapping of the Site* – Develop a map of the Site that includes topographic information and physical features on and near the Site. If no detailed topographic map for the Site and surrounding area exists, a survey of the Site will be conducted. Aerial photographs should be used, when available, along with information gathered during the preliminary Site visit to identify physical features of the area.

2.) *Contaminant Characterization* – Determine the locations, type and quantities as well as the physical or chemical characteristics of any hazardous substance, pollutants or contaminants at the Site. If hazardous substances are held in containment vessels, the integrity of the containment structure and the characteristics of the contents will be determined.

3.) *Hydrogeologic Investigation* – Determine the presence and potential extent of groundwater contamination. Efforts should begin with a survey of previous hydrogeologic studies and other existing data. The survey should address the soils retention capacity/mechanisms, discharge/recharge areas, regional flow directions and quality and the likely effects of any alternatives that are developed involving the pumping and disruption of groundwater flow. Results from the sampling program should estimate the horizontal and vertical distribution of contaminants, the contaminants mobility and predict the long-term disposition of contaminants. Initial delineation of COPCs may be accomplished using direct push borings, to be followed up by installation of a network of groundwater monitoring wells.

4.) *Soils Investigation* – Determine the vertical and horizontal extent of contamination of surface and subsurface soils and identify any uncertainties with this analysis. Information on local background levels, degree of hazard, location of samples, techniques used, and methods of analysis should be included. If initial efforts indicate that buried waste may be present, the probable locations and quantities of these subsurface wastes should be identified through the use of appropriate geophysical methods.

The RI field activities will be completed in a phased approach. The first phase will generally consist of source area and downgradient plume delineation.

The Respondents will incorporate information from these tasks into the RI Report.

TASK 3 SAMPLE ANALYSIS

The Respondents will develop a data management system including field logs, sample management and tracking procedures, and document control and inventory procedures for both laboratory data and field measurements to ensure that the data collected during the investigation are of adequate quality and quantity to support the VI evaluation, HHRA, and the FS. Collected data should be validated at the appropriate field or laboratory QC level to determine whether it is appropriate for its intended use. Task

management and quality controls will be provided by the Respondents. The Respondents will incorporate information from this task into the RI/FS report appendixes.

TASK 4 DATA EVALUATION

The Respondents will analyze site investigation data and present the results of the analyses in an organized manner indicating the relationships between site investigation results for each medium. The Respondents will prepare a summary that describes (1) the quantities and concentrations of specific chemicals at the site and the ambient levels surrounding the site; (2) the number, locations, and types of nearby populations and activities; and (3) the potential transport mechanism and the expected fate of the contaminant in the environment.

TASK 5 VAPOR INTRUSION

The Respondents will prepare a separate VI Work Plan/Evaluation Report, after completion of the first phase of RI field work, which will describe the proposed approach to evaluating VI. Respondents will summarize and evaluate FI data, existing EPA data, other available data, and Phase I RI data to propose to EPA whether additional VI investigation is warranted. Additional investigation will be conducted if COPC concentrations in soil gas or shallowest groundwater within 100 feet of either occupiable structures or identified substantial preferential pathways (including underground utility corridors or shallow permeable lenses) exceed USEPA Vapor Intrusion Screening Level (VISL) indicative of the potential for VI into indoor air and if the relevant area has not been previously investigated for VI. Currently, EPA Region 7 uses a removal management level for TCE in a residential/commercial setting of 2.0 $\mu g/m^3$/6.0 $\mu g/m^3$, respectively, which are Region 7 values not reflected in the VISL calculator. These values are subject to change based on updated toxicity values. If EPA agrees that the VI evaluation indicates that additional investigation is not required, a memorandum (i.e., VI Evaluation Report) will be provided; however, if additional investigation is needed, then the work plan proposing the VI sampling approach will be provided to the EPA. The information provided shall be based on the best available Site information and professional judgment. Any VI Investigation will be done in accordance with the EPA guidance, procedures, assumptions, methods and formats.
The VI Work Plan/Evaluation Report shall be submitted to the EPA as a separate deliverable and will follow the "OSWER Technical Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air" June 2015.

TASK 6 RISK ASSESSMENT

The Respondents shall conduct an HHRA and a ERA to assess the potential human health and environmental risks posed by the site in the absence of any remedial action. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment and risk characterization.

1.) *Contaminant Identification* – The Respondents will review available information on the hazardous substances present at the site and identify the major COCs. COCs should be selected based on their intrinsic toxicological properties because they are present in large quantities,

and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

2.) *Exposure Assessment* – The Respondents will identify actual or potential exposure pathways, characterize potentially exposed populations and evaluate the actual or potential extent of exposure.

3.) *Toxicity Assessment* – The Respondents will provide a toxicity assessment of those chemicals found to be of concern during site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationships between magnitude of exposures and adverse effects and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity).

4.) *Risk Characterization* – The Respondents will integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies) and/or exposure assumptions.

The HHRA and ERA will be done in accordance with the EPA risk assessment guidance, procedures, assumptions, methods and formats.

The HHRA and ERA Report shall be submitted to the EPA as a separate deliverable.

TASK 7 RI REPORT(S)

In accordance with the schedule approved by the EPA, Respondents shall submit two hard copies and an electronic copy of a draft RI Report to the EPA for review and approval by the EPA. The RI Report shall provide information to assess risks to human health and the environment and to support the development, evaluation and selection of appropriate response alternatives. The task includes all draft and final reports. The RI Report shall be written in accordance with "Guidance for Conducting Remedial Investigations/Feasibility Studies under CERCLA," OSWER Directive 9355.3-01, October 1988, Interim Final (or latest revision). And "Guidance for Data Usability in Risk Assessment," (EPA/540/G-90/008), September 1990 (or latest revision). The typical components of the RI Report include, but are not limited to the following:

- Site Background
- Investigation
    - Field Investigation and technical approach
    - Chemical analyses and analytical methods
    - Field methodologies (microbiological, soil boring, soil sampling, monitoring well installation, groundwater sampling, hydrogeological assessment)
- Site Characteristics
    - Geology

  - Hydrogeology
  - Meteorology
  - Demographics and land use
  - Reuse assessment
  - Ecological assessment
- Nature and Extent of Contamination
  - Contaminant sources
  - Contaminant distribution and trends
- Fate and Transport
  - Contaminant characteristics
  - Transport processes
  - Contaminant migration trends
- Risk Assessment (Human Health and Ecological)
- Summary and Conclusions
- Data Validation and Data Usability

The HHRA and ERA Report and VI Report (or memorandum) shall be submitted to the EPA as separate deliverables.

TASK 8 TREATABILITY STUDY/PILOT TESTING

If the EPA or Respondents determines that treatability testing is necessary, Respondents shall conduct treatability studies as described in this section of the SOW. In addition, if applicable, Respondents shall use the testing results and operating conditions in the detailed design of the selected remedial technology. Respondents shall perform the following:

Identification of Candidate Technologies

Respondents shall identify candidate technologies for a treatability studies program no later than at the time of submittal of the draft RI Report. The list of candidate technologies shall cover the range of technologies required for alternatives analysis. Respondents shall determine and refine the specific data requirements for the testing program during site characterization and the development and screening of remedial alternatives.

During identification of candidate technologies, Respondents shall conduct a literature survey to gather information on the performance, relative costs, applicability, removal efficiencies, operation and maintenance, or O&M, requirements, and implementability of candidate technologies. Respondents shall conduct treatability studies to assist evaluation of relevant technologies except where Respondents can demonstrate to the EPA's satisfaction that they are not needed.

These activities may be completed as separate memorandum submitted to the EPA or as meetings conducted with the EPA with agreed-upon conclusions distributed after the meetings. Respondents shall submit a detailed agenda to the EPA at least 7 days prior to the meeting to

ensure a well-informed discussion occurs. Respondents will draft and submit to the EPA the conclusions within 15 days following the meeting date. The conclusions will be reviewed and approved or approved with modifications by the EPA.

Treatability Testing and Deliverables

- **Treatability Testing Work Plan and Sampling and Analysis Plan**

If the EPA or Respondents determines that treatability testing is necessary, the Respondents will determine the type of treatability testing to use (e.g., bench versus pilot), subject to the EPA's approval. Within 60 days of a request of the EPA and no sooner than the EPA's approval of the RI Report, Respondents shall submit a paper copy and an electronic copy of the Treatability Testing Work Plan and a SAP supplement, to the EPA for review and approval by the EPA, that describes the site background, the remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, residual waste management and a schedule. Respondents shall document the DQOs for treatability testing as well. If pilot scale treatability testing is to be performed, the Treatability Study Work Plan shall describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance and a health and safety plan. If testing is to be performed off-site, the plans shall address all permitting requirements.

- **Treatability Study Health and Safety Plan**

If the RI/FS HASP is not adequate for defining the activities to be performed during the treatability tests, Respondents shall submit a separate or second amended HASP consistent with Paragraph 35 of the AOC. The EPA reviews, but does not "approve" the Treatability Study HASP.

- **Treatability Study Evaluation Report**

Following the completion of the treatability testing, Respondents shall analyze and interpret the testing results in a technical report to the EPA. Respondents shall submit the treatability study report according to the schedule in the Treatability Study Work Plan. This report may be part of the RI Report or submitted as a separate deliverable. The Treatability Study Evaluation Report shall evaluate each technology's effectiveness, implementability, cost and actual results as compared with expected results, the report shall also evaluate full-scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 9 REMEDIAL ALTERNATIVE DEVELOPMENT AND SCREENING

As part of the FS Process, work will be performed to develop appropriate remedial alternatives to undergo full evaluation. The alternatives are to encompass a range including innovative treatment technologies consistent with the regulations outlined in the National Contingency Plan, or NCP, 40 CFR Part 300 and applicable Agency guidance, procedures and directives, such as the Guidance for Conducting Remedial Investigations and Feasibility studies under CERCLA (OSWER Directive 9355.3-01 and other OSWER Directives including 9355.4-03, October 18, 1989 and 9283.1-06, May 27, 1992 "Considerations in Ground Water Remediation at Superfund Sites"). The analysis will include institutional controls, or ICs, to the extent appropriate. This task will include identification of the RAOs and screening of alternatives. These activities may be completed as separate memoranda submitted to the EPA or as meetings conducted with the EPA with agreed-upon conclusions distributed after the meetings; the schedule for completing the draft FS Report will not be affected by the process for the interim activities. Respondents shall submit a detailed agenda to the EPA at least 7 days prior to the meeting to ensure a well-informed discussion occurs. Respondents will draft and submit to the EPA the conclusions within 15 days after a meeting and shall be detailed enough to independently document the identification of the RAOs and why certain alternatives were screened out, to assist in developing an adequate Administrative Record for the site in support of the selected remedy. The conclusions will be reviewed and approved or approved with modifications by the EPA. Activities required under the FS include, but are not limited to the following:

Remedial Action Objectives

Based on existing information and the HHRA and ERA, Respondents shall provide site-specific RAOs for each chemical in each medium. The RAOs shall specify the contaminant(s) and media of concern, the exposure route(s) and receptor(s) and an acceptable contaminant level or range of levels for each exposure route (i.e., preliminary remediation goals, or PRGs). PRGs should be established based on readily available information (e.g., reference doses) or chemical-specific ARARs (e.g., maximum contaminant levels, or MCLs). The RAOs shall be developed by considering the factors set forth in 40 CFR § 300.430(e)(2)(i). Respondents shall incorporate the EPA's comments on the RAOs in the FS.

Alternatives Screening

The screening of alternatives shall include an alternatives array summary and shall document the methods, the rationale and the results of the alternatives screening process. If required by the EPA, Respondents shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis.

The screening of alternatives shall include the components listed below and shall incorporate the EPA's comments.

Develop General Response Actions

General response actions shall be developed that include containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the EPA-approved RAOs.

Identify Areas or Volumes of Media

Areas or volumes of media shall be identified to which the general response actions may apply, taking into account requirements for protectiveness as identified in the RAOs. Respondents shall also take into account the chemical and physical characterization of the site.

Identify, Screen and Document Remedial Technologies

Technologies applicable to each response action shall be identified and evaluated to eliminate those that cannot be implemented. Respondents shall refine applicable general response actions to specify remedial technology types. Respondents shall identify technology process options for each of the technology types concurrently with the identification of such technology types or following the screening of considered technology types. Respondents shall evaluate process options on the basis of effectiveness, implementability and cost factors to select and retain one or, if necessary, more representative processes for each relevant technology type. Respondents shall summarize and include the technology types and process options. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

A preliminary list of alternatives shall be provided to address the contamination that shall include those listed in 40 CFR § 300.430(e)(1-7). Respondents shall specify the reasons for eliminating any alternatives. Respondents shall prepare a summary of the assembled alternatives and their related ARARs.

Conduct and Document Screening Evaluation of Each Alternative

Respondents may perform a final screening process based on short and long-term aspects of effectiveness, implementability and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for a detailed analysis. If necessary, Respondents shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening shall preserve the range of treatment and containment alternatives that were initially developed. The range of remaining alternatives shall include options that use treatment technologies and permanent solutions to the maximum extent practicable. The screening of alternatives shall summarize the results and reasoning employed in screening arrays, the alternatives that remain after screening, and identify the action-specific ARARs for the alternatives that remain after screening.

TASK 10 FEASIBILITY STUDY

This task includes efforts associated with the assessment of individual alternatives against each of the nine evaluation criteria and a comparative analysis of all options against the evaluation criteria. The analysis is to be consistent with the NCP, 40 CFR Part 300 and is to consider the Guidance for Conducting RI/FS under CERCLA (OSWER Directive 9355.3-01), Guide to Developing and Documenting Cost Estimates During the Feasibility Study (OSWER Directive 9355.0-75), and other pertinent OSWER guidance. The analysis will include ICs to the extent appropriate. The EPA will make the determination regarding final selection of the remedial alternative. Activities required under this task include the following:

Apply Nine Criteria and Document Analysis

Respondents shall apply the nine evaluation criteria to each of the assembled remedial alternatives to ensure that the selected remedial alternative will protect human health and the environment and meet RAOs; will comply with or include a waiver of ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria shall include:

- Overall protection of human health and the environment
- Compliance with ARARs
- Long-term effectiveness and permanence
- Reduction in toxicity, mobility or volume through treatment
- Short-term effectiveness
- Implementability - technical and administrative
- Cost
- State acceptance
- Community acceptance

Individual and Comparative Analysis of Alternatives

Respondents shall perform a comparative analysis between the remedial alternatives. That is, Respondents shall compare each alternative against the other alternatives using the evaluation criteria as a basis of comparison. The individual and comparative analysis of alternatives will summarize the results of the analyses.

Alternative Analysis for Institutional Controls and Screening

For any alternative that relies on ICs, Respondents shall include in the FS Report an evaluation of the following: (1) the restrictions needed on land, water, or other resources and their relationship to the RAOs; (2) determine the specific types of ICs that can be used to address and implement the land, water, or other resource use restrictions; (3) investigate when the ICs need to be implemented and how long they must remain in place; (4) research, discuss, and document any agreement or other arrangements with the proper entities (e.g., state, local government, local landowners, conservation organizations,

Respondents) on exactly who will be responsible for implementing, maintaining and enforcing the ICs. The Alternative Analysis for ICs and Screening shall also evaluate the identified ICs against the nine criteria outlined in the NCP [(40 C.F.R. § 300.430(e)(9)(iii)] for CERCLA cleanups, including but not limited to costs to implement, maintain, and/or enforce the ICs.

TASK 11 FS REPORT(S)

This task includes work efforts related to the preparation of findings once remedial alternatives have been screened and evaluated. The task includes preparation of all draft and final reports. Respondents shall prepare and submit a draft FS Report to the EPA for its review. The FS Report shall document the development and screening of the remedial alternatives and present the detailed analysis of remedial alternatives. The EPA will review the draft FS Report in accordance with Section IX of the AOC. The FS Report shall include, but are not limited to a discussion of the following:

- FS Objectives
- RAOs and PRGs
- General Response Actions
- Identification and screening of Remedial Technologies
- Remedial Alternatives Description
- Detailed Analysis of Remedial Alternatives (individual and comparative)
- Summary and Conclusions

TASK 12 PROGRESS REPORTS

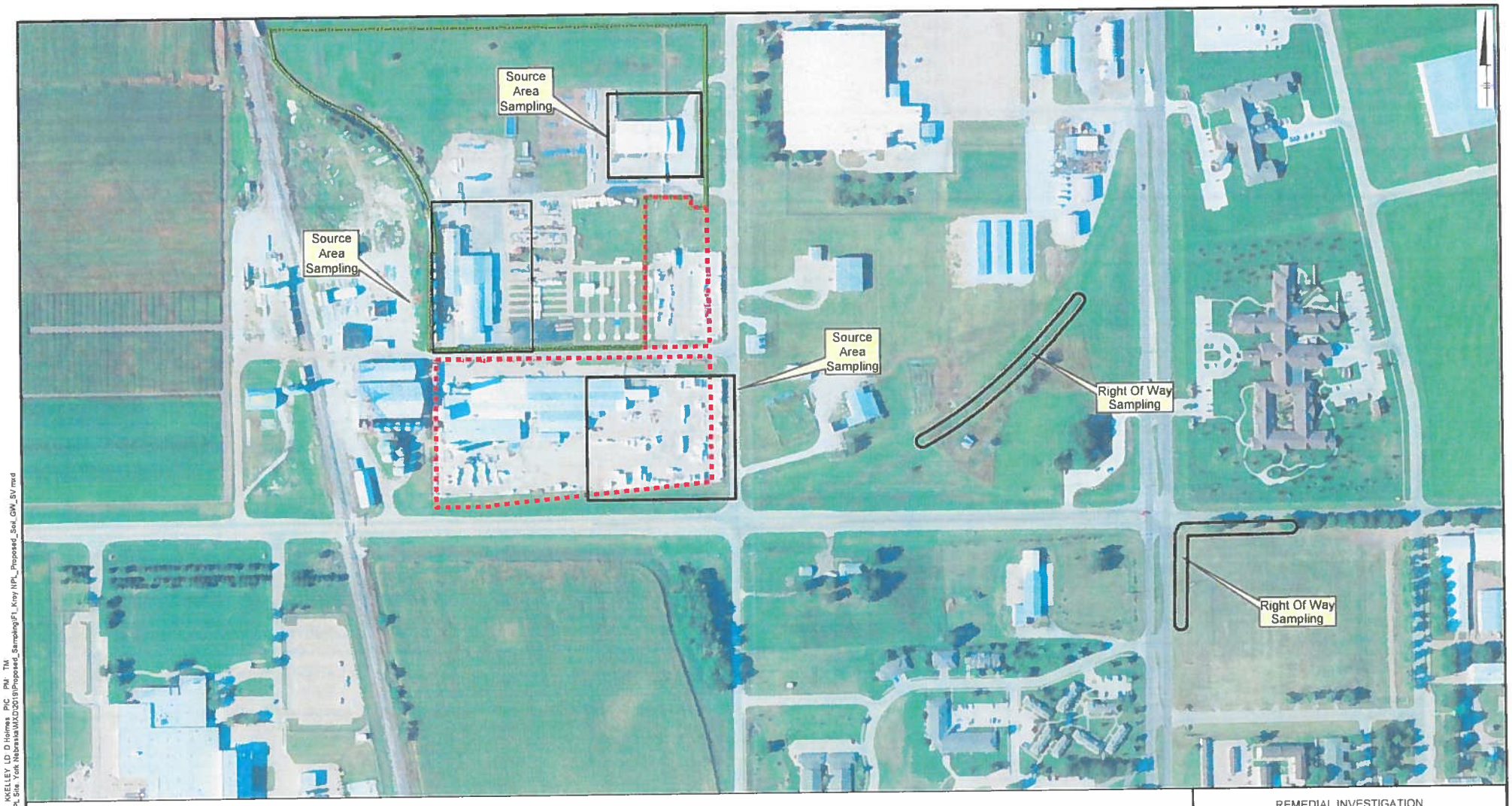
After the Effective Date of the AOC and until completion of the work and close-out of the AOC, Respondents shall submit periodic written progress reports to the EPA concerning actions undertaken pursuant to the AOC and this SOW, as outlined in the Schedule of Deliverables/Milestones unless otherwise directed in writing by the Remedial Project Manager, or RPM. The periodic Progress Reports will initially be submitted on a monthly basis, with less frequent progress reports later in the program if approved by the RPM. These reports shall include, but not limited to, a description of all significant developments during the preceding period, including the specific work that was performed and any problems that were encountered; a summary of the data that was received during the reporting period; and the developments anticipated during the next reporting period including a schedule of work to be performed, anticipated problems and actual or planned resolutions of past or anticipated problems. The progress reports will summarize the field activities conducted each month including, but not limited to drilling and sampling locations; depths and descriptions; boring logs; sample collection logs; field notes; problems encountered; solutions to problems; a description of any modifications to the procedures outlined in any part of the RI/FS Work Plan, including the FSP, QAPP or HASP supplements, with justifications for the modifications; a summary of all data received during the reporting period along with the validated analytical results, and upcoming field activities. In addition, Respondents shall provide the RPM with all validated laboratory data within the progress reports.

V. SCHEDULE OF DELIVERABLES/MILESTONES

DELIVERABLE	DUE DATE
Draft RI/FS Work Plan and SAP Supplement (FSP/QAPP/HASP)	Within 90 days after the Effective Date of the AOC
Draft HHRA and ERA Work Plan	Within 90 days after the Effective Date of the AOC
Draft VI Work Plan/Evaluation Report	Within 60 days after validation of last field sample for the Phase 1 RI sampling required by the approved SAP.
Draft RI Report	Within 90 days after validation of last field sample required by the approved SAP
Draft HHRA and ERA Report	Within 90 days after validation of last field sample required by the approved HHRA and ERA Work Plan or within 120 days after EPA approval of HHRA and ERA Work Plan, whichever is later.
Draft VI Report	Within 90 days after validation of last field sample required by the approved VI Work Plan, if needed
Draft Treatability Testing Work Plan	Within 60 days of request of the EPA and no sooner than EPA approval of RI Report, if needed.
Treatability Testing Candidate Technologies Meeting Agenda	At least 7 days prior to the meeting date, if needed
Treatability Testing Candidate Technologies Meeting Conclusions	Within 15 days following the meeting, if needed
Draft Treatability Study Evaluation Report	Within 90 days after completion of any treatability testing.
RAOs Meeting Agenda	At least 7 days prior to the meeting date
RAOs Meeting Conclusions	Within 15 days following the meeting
Alternatives Screening Meeting Agenda	At least 7 days prior to the meeting date
Alternatives Screening Meeting Conclusions	Within 15 days following the meeting
Draft FS Report	Within 120 days of EPA approval of Final RI Report or Final Treatability Study Report, whichever is later, exclusive of EPA review and comment periods identified in Task 9.
Progress Reports	On the 20th day of each month after the Effective Date
Written notice to the EPA that payment of bill for Future Response Costs has been made	At the time of payment

Certificates of insurance and copy of insurance policies	Within 30 days of start of field work
Written Evidence of Financial Assurance	Within 30 days of the Effective Date

The Respondents' deliverables will be inspected by the EPA for acceptability. Unacceptable deliverables will be returned to the Respondents with comments and directions, consistent with the AOC, for necessary corrections or rework which may be applicable.



CITY (DEN-TECH) DIV/GROUP (ENV/GIS) DB KKELLEY LD D Holmes PIC PM TM
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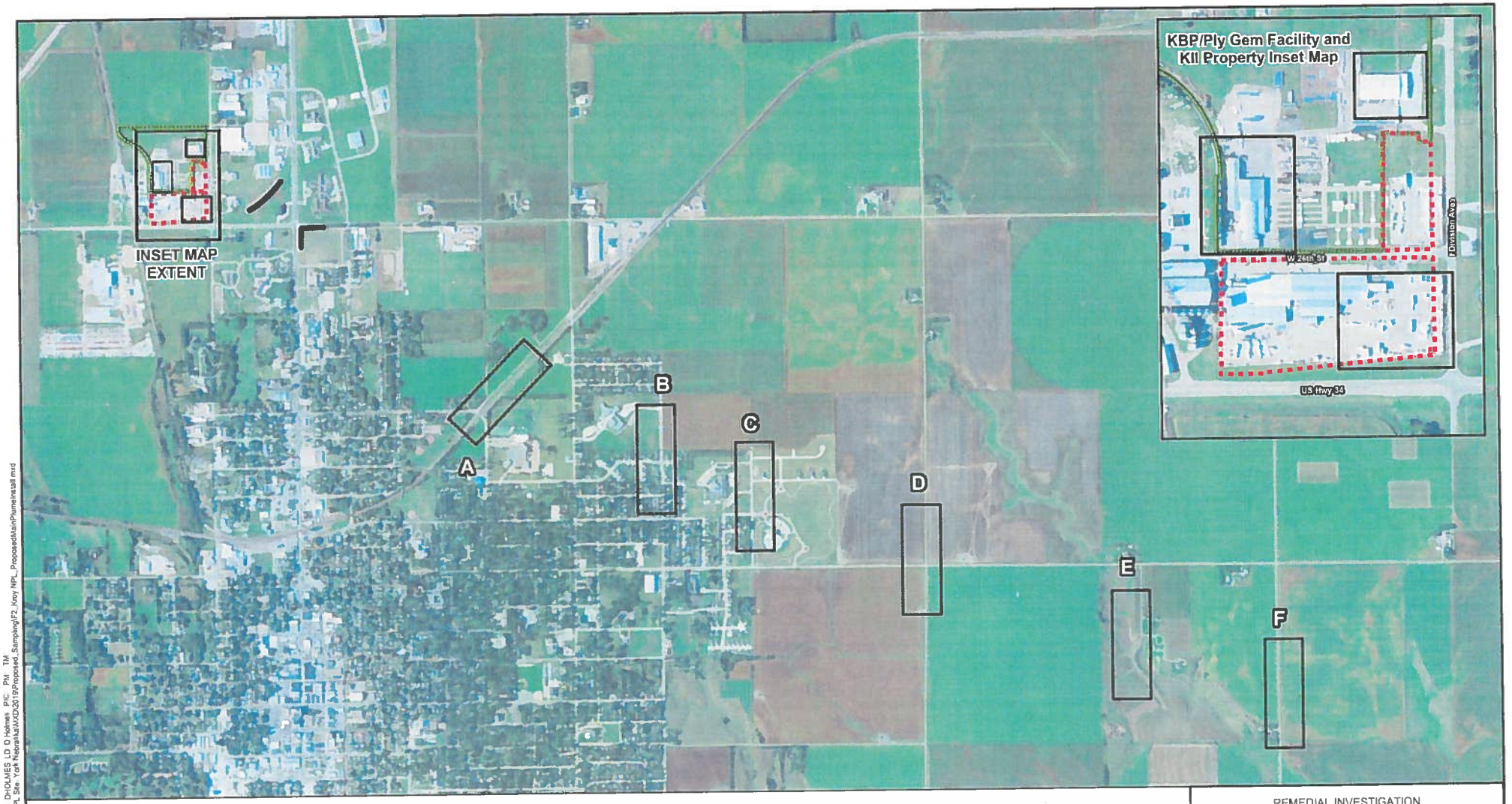

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LEGEND

- KBP/Ply Gem Facility
- KII Property
- Proposed direct push groundwater delineation sampling corridors. Rectangle indicates the locations for remote sensing and groundwater sample boring locations.

Results of the Direct-Push sampling will be used to determine locations of proposed monitoring wells.

0 1,800 3,600
SCALE IN FEET

0 500 1,000
INSET MAP SCALE IN FEET

REMEDIAL INVESTIGATION
YORK, NEBRASKA

PROPOSED SAMPLING AREAS

ARCADIS Design & Consultancy for natural and built assets

FIGURE
2