UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 7**
**901 NORTH 5TH STREET**
**KANSAS CITY, KANSAS 66101**

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| **In the Matter of:**<br><br>**Columbus Former Manufactured Gas Plant Site**<br>**Columbus, Nebraska**<br><br>**Centel Corporation,**<br><br>**Work Respondent,**<br><br>**and**<br><br>**Black Hills/Nebraska Gas Utility Company LLC**<br><br>**Owner Respondent.**<br><br>Proceedings under Sections 104, 106(a),107 and 122 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9604, 9606(a), 9607 and 9622). | **Docket No. CERCLA-07-2012-0022**<br><br>**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION** |

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Centel Corporation ("Centel" or "Work Respondent") and Black Hills/Nebraska Gas Utility, LLC, d/b/a Black Hills Energy ("BHE" or "Owner Respondent"). This Settlement Agreement provides for the performance of a removal action by Work Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the "Columbus Former Manufactured Gas Plant" ("FMGP") Site ("Site"), which is located in the city of Columbus, Platte County, Nebraska.

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

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

4. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Work Respondent and Owner Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Work Respondent and Owner Respondent do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Work Respondent and Owner Respondent agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

## II. PARTIES BOUND

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

6. Work Respondent is liable for carrying out all activities required by this Settlement Agreement.

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

## III. DEFINITIONS

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

a. "Removal Action Memorandum" shall mean the EPA Enforcement Action Memorandum relating to the Site signed on June 30, 2010, by the Regional Administrator, EPA Region 7, or his/her delegate, and all attachments thereto. The "Removal Action Memorandum" is attached as Appendix A.

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

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

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

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

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraphs 35 and 36 (costs and attorneys fees and any monies paid to secure access or institutional controls, including the amount of just compensation), and Paragraph 46 (emergency response), Paragraph 68 (work takeover); and shall include all such costs not pursuant to this Settlement Agreement but incurred by the United States with respect to the Site from the March 9, 2011, date of the notice of

completion of the Administrative Order on Consent for Engineering Evaluation/Cost Analysis, Docket No. CERCLA-07-2006-0265, to the effective date of this Settlement Agreement. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually 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.

h. "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.

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

j. "Owner Respondent" shall mean Black Hills/Nebraska Gas Utility Company LLC, d/b/a Black Hills Energy.

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

l. "Parties" shall mean EPA, Work Respondent and Owner Respondent.

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

n. "Work Respondent" shall mean Centel Corporation.

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

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

q. "Site" shall mean the Columbus Former Manufactured Gas Plant ("FMGP") Site, which is located at 1169 22nd Avenue, Columbus, Nebraska and depicted generally on the site map attached as Appendix B.

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

s. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix C to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

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

§ 6903(27); and (4) any "hazardous material" under Neb. Rev. St. § 81-1567(2).

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

## IV. FINDINGS OF FACT

9. The Columbus Former Manufactured Gas Plant Site is located at 1169 22nd Avenue, in the city of Columbus, Platte County, Nebraska. The Site is depicted in Appendix B of this Settlement Agreement.

10. The Site is on approximately one-half acre, in a mixed residential, commercial, and industrial use area. To the south and east are residential properties, to the north are railroad tracks, and to the west light industrial property. The Site is fenced, with on-Site buildings, and is used by BHE, the current property owner, for limited storage purposes.

11. The Site is located within the larger geographic boundary of a groundwater plume contaminated with perchlorethylene ("PCE") at the level of 5-100 ug/L. This PCE contamination, unrelated to the former MGP at the Site, is the subject of an ongoing EPA cleanup in Columbus, Nebraska ("10th Street Site"). The 10th Street Site involves releases from various historic and current drycleaner operations in Columbus, Nebraska. These releases threaten to affect the City of Columbus drinking water wells. The EPA prepared a Record of Decision for the 10th Street Site which contemplates the installation of up to four wells to divert the direction of the flow of and to remove the PCE.

12. A manufactured gas plant was owned and operated at the Site by Columbus Gas Company from approximately 1908 to 1927, and by Central West Public Service Company from 1927 until approximately 1932 when the manufactured gas plant operations ceased. Hazardous

substances that may be present on-Site include those typically associated with manufactured gas plants, such as polynuclear aromatic hydrocarbon ("PAH") constituents.

13. On July 27, 1927, the owner and operator of the manufactured gas plant at the Site, Columbus Gas Co., sold the Site to Central West Public Service Co., which continued to operate the manufactured gas plant until approximately 1932. In 1934, Central West Public Service Co. was reorganized in bankruptcy and all of its assets, including the Site, were sold to Central Electric & Telephone Co. On July 27, 1944, Central Electric & Telephone Co. restructured and changed its name to Central Electric & Gas Co. On May 1, 1961, Central Electric & Gas Co. changed its name to Western Power & Gas Co. In 1968 Western Power & Gas Co. changed its name to Central Telephone & Utilities Corp. On September 8, 1976, Central Telephone & Utilities Corporation recorded its corporation warranty deed of the Site to Minnesota Gas Co., also known as Minnegasco. In 1982, Central Telephone & Utilities Corp. changed its name to Centel Corp. On February 1, 1993, the successor to Minnegasco, Arkla, Inc., sold the Site to UtiliCorp United, Inc. d/b/a Peoples Natural Gas. UtiliCorp United, Inc. later changed its name to Aquila, Inc., and was in turn acquired by Black Hills/Nebraska Gas Utility Company LLC in July 2008. Work Respondent Centel Corp. is a corporation organized under the laws of the State of Kansas, and Owner Respondent Black Hills/Nebraska Gas Utility Company LLC is a limited liability corporation organized under the laws of the State of Delaware. The Site is currently used for storage of utility equipment and vehicles.

14. Soil sampling conducted at the Site in 1991 and 1992 indicates the existence of certain hazardous substances at levels that may be above background. These substances include PAH compounds.

15. Centel Corp. and Aquila, Inc. notified EPA in 2003 that EPA's planned remedy for the 10th Street Site, if carried out, could impact the Site.

16. Effective May 12, 2003, Centel Corp. entered into an Administrative Order on Consent for Removal Site Evaluation for Groundwater, for the Columbus, Nebraska, Former Manufactured Gas Plant Site, Docket No. CERCLA-07-2003-0149, and on October 1, 2003 had completed the work required under that order.

17. Effective April 4, 2004, Centel Corp. and Aquila, Inc. entered into an Administrative Order on Consent for Removal Site Evaluation for the Source of Contamination and Baseline Risk Assessment, for the Columbus, Nebraska, Former Manufactured Gas Plant Site, Docket No. CERCLA-07-2003-0307. The Removal Site Evaluation ("RSE") field activities at the Site were conducted from March 29 through May 12, 2004. Field activities included collecting soil samples, test trenching, installing monitoring wells, and collecting ground water samples. An RSE Supplemental Investigation was conducted from April 18 to June 24, 2005. The final Removal Site Evaluation and the final Baseline Risk Assessment reports were approved by EPA on April 13, 2006. The Final Removal Site Elevation and Baseline Risk Assessment identified elevated levels of benzene, toluene, ethylbenzene, and xylene ("BTEX") and PAHs at the Site. Data gaps in relation to contamination originating from the Site were addressed during the engineering evaluation/cost analysis ("EE/CA") described in Paragraph 18.

18. Effective May 3, 2007, Centel Corp. and Aquila, Inc. entered into an Administrative Order on Consent for Engineering Evaluation/Cost Analysis for the Columbus, Nebraska, Former Manufactured Gas Plant Site, Docket No. CERCLA-07-2006-0265, and on March 9, 2011, EPA issued its notice of completion under that order.

19. On May 18, 2010, EPA conducted a public meeting on the proposed remedy at the City Council chambers of Columbus, Nebraska. The administrative record for the proposed remedy was made available for public comment in Columbus, Nebraska and at the Region 7 offices in Kansas City, Kansas. The NDEQ commented that long term groundwater cleanup was not addressed in the proposed remedy. No other adverse comments were received for the public comment period which ended on June 15, 2010. On June 30, 2010, EPA issued its Removal Action Memorandum decision document for the Site, which included a responsiveness summary to the comments. The removal action for on-Site contaminated soils is excavation of contaminated soils down to groundwater and (a) off-Site disposal at a licensed landfill, backfilling the excavated areas with clean fill, and implementation of institutional controls; or (b) treatment by off-Site thermal desorption and implementation of institutional controls. The removal action for off-Site contaminated soils is excavation of contaminated soils down to 10 feet below ground surface and (a) off-Site disposal at a landfill, backfilling the excavated areas with clean fill, and implementation of institutional controls; or (b) treatment by off-Site thermal desorption and implementation of institutional controls. The removal action to address contaminated groundwater at the Site is groundwater monitoring as a post-removal site control. At the time of the soil excavation, confirmatory soil sampling will be conducted. Additional sampling will be conducted to further assess the risk, if any, of vapor intrusion.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Columbus Former Manufactured Gas Plant 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 substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Work Respondent and Owner Respondent are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The Work Respondent and Owner Respondent each may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

i. Owner Respondent BHE is the current "owner" 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).

ii. Work Respondent Centel was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in Paragraphs 12, 14, and 17 of the Findings of Fact above constitute an actual or threatened of "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

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

consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## VI. SETTLEMENT AGREEMENT AND ORDER

21. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Work Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

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

22. Work Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 10 days of the Effective Date. Work Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Work Respondent. If EPA disapproves of a selected contractor, Work Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of EPA's disapproval.

23. (a) Work Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Work Respondent required by this Settlement Agreement:

Trey Pitts
Sprint Corporation
6450 Sprint Parkway
KSOPHN0404-4B302
Overland Park, KS 66251
(913) 762-6286
trey.d.pitts@sprint.com.

To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Work Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address and qualifications within 30 days following EPA's disapproval. Receipt by Work Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Work Respondent.

(b) Owner Respondent has designated Michael Pogany as its Project Coordinator. Copies of all notices and submissions required under this Settlement Agreement shall be sent to Mr. Pogany at Black Hills/Nebraska Gas Utility LLC, PO Box 1400, Rapid City, South Dakota 57709-1400. Mike.pogany@blackhillscorp.com.

24. EPA has designated Mr. Todd Davis of the Region 7 Superfund Division as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Work Respondent shall direct all submissions required by this Settlement Agreement to the OSC at the United States Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, Mr. Davis' phone number is (913) 551-7749 and his email is davis.toddh@epa.gov.

25. EPA and Work Respondent shall have the right, subject to Paragraph 22, to change their respective designated OSC or Project Coordinator. Work Respondent shall notify EPA 10 days before such a change is made, or as soon as practicable if 10 days advance notice is not possible. The initial notification may be made orally, but shall be promptly followed by a written notice.

## VIII. WORK TO BE PERFORMED

26. Work Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work. The actions to be implemented generally include, but are not limited to, the following:

27. Work Plan and Implementation

a. Within 60 days after the Effective Date, Work Respondent shall submit to EPA for approval a draft Remedial Action Work Plan ("RAWP") for performing the removal action generally described in Paragraph 19 above. The draft RAWP shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. A Quality Assurance Project Plan ("QAPP") is required as part of the RAWP. The previously approved "QAPP, Columbus FMGP Site," dated January, 2004 and prepared for Centel, may be submitted, with QAPP addendum to update the revised project organization and responsibilities, quality assurance objectives, quality assurance procedures for laboratory and field activities including any revised laboratory methods and detection limits, and quality assurance reports. Work Respondent shall ensure that the laboratory used to perform analyses under this Settlement Agreement participates in a QA/QC program that complies with the guidance

documents set out in Appendix D. Work Respondent shall include in its contracts with all laboratories and personnel utilized for sample collection and analysis and other field work a provision allowing EPA representatives access to such laboratories and personnel for auditing purposes.

b. EPA may approve, disapprove, require revisions to, or modify the draft RAWP in whole or in part. If EPA requires revisions, Work Respondent shall submit a revised draft RAWP within 30 days of receipt of EPA's notification of the required revisions. Work Respondent shall implement the RAWP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the RAWP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Work Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Work Respondent shall not commence implementation of the RAWP developed hereunder until receiving written EPA approval pursuant to Paragraph 27(b).

28. Health and Safety Plan. Within 60 days after the Effective Date, Work Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently

applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Work Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

29. Quality Assurance and Sampling

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Work Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Work Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Work Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001; Reissued May 2006)," or equivalent documentation as determined by EPA. EPA may consider laboratories

accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

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

c. Upon request by EPA, Work Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Work Respondent shall notify EPA not less than 15 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Work Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Work Respondent's implementation of the Work.

30. Post-Removal Site Control. In accordance with the RAWP schedule, or as otherwise directed by EPA, Work Respondent shall submit a proposal for post-removal Site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Work Respondent shall implement such controls and shall provide EPA with documentation of all post-removal Site control arrangements.

31. Reporting.

a. Work Respondent shall submit monthly written progress reports to EPA concerning actions undertaken pursuant to this Settlement Agreement. Beginning with the first full month following the effective date of this

Settlement Agreement, such reports shall be due by the 15th day of each month, until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next two reporting periods, including a schedule of actions to be performed, anticipated problems or delays, and planned resolutions of past or anticipated problems

b. Work Respondent shall submit one (1) electronic and two (2) paper copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan.

c. Owner Respondent at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to EPA of the proposed conveyance, including the name and address of the transferee. Owner Respondent at the Site also agrees to require that its successors comply with the immediately preceding sentence and Section IX (Site Access).

32. Final Report. Within 90 days after completion of all Work required by this Settlement Agreement, Work Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and "Superfund Removal Procedures: Removal Response

Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

33. Off-Site Shipments

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

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

ii. The identity of the receiving facility and state will be determined by Work Respondent following the award of the contract for the removal action. Work Respondent shall provide the information required by Paragraphs 33(a) and 33(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

## IX. SITE ACCESS AND INSTITUTIONAL CONTROLS

34. Owner Respondent shall, commencing on the Effective Date, provide EPA and its authorized representatives, including contractors, with access at all reasonable times to the Site for the purpose of conducting any activity related to this Settlement Agreement.

35. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Owner Respondent, Work Respondent shall use its best efforts to obtain all necessary access agreements within 90 days after the EPA's written approval of the RAWP, or as otherwise specified in writing by the OSC. Work Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Work Respondent shall describe in writing its efforts to obtain access. EPA may then assist Work Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Work Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

36. Upon completion of the physical construction activities required under the RAWP, institutional controls shall be implemented as follows:

a. Proprietary institutional controls for Site property owned by Owner Respondent shall be filed in substantially the same form as Appendix E-1, within 30 days after approval of the final document by EPA.

b. Proprietary institutional controls for property not owned by Work Respondent or Owner Respondent but determined to be potentially affected by vapor intrusion as a result of releases from the Site shall be filed in substantially the same form as Appendix E-2, within 90 days after approval of the final documents and affected properties by EPA. Work Respondent shall use its best efforts to obtain cooperation by affected property owners to file such proprietary institutional controls. Work Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such cooperation. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of filing the proprietary controls. Work Respondent shall describe in writing its efforts to obtain cooperation. EPA may then assist Work Respondent in gaining cooperation, to the extent necessary to file such proprietary controls, using such means as EPA deems appropriate. Work Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such proprietary controls, in accordance with the procedures in Section XV (Payment of Response Costs).

c. If EPA determines that land/water use restrictions in the form of State or local laws, regulations, ordinances or other governmental controls are needed to implement the Removal Action Memorandum, Work Respondent shall cooperate with EPA's and the State's efforts to secure such governmental controls.

37. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## X. ACCESS TO INFORMATION

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

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

40. Work Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized

by federal law. If the Work Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Work Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

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

## XI. RECORD RETENTION

42. Until ten years after Work Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Work Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten years after Work Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Work Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to performance of the Work.

43. At the conclusion of this document retention period, Work Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Work Respondent shall deliver any such records or documents to EPA. Work Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Work Respondent asserts such a privilege, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Work Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

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

## XII. COMPLIANCE WITH OTHER LAWS

45. Work Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to

this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Work Respondent shall identify ARARs in the Work Plan subject to EPA approval.

## XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

46. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Work Respondent shall immediately take all appropriate action. Work Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Work Respondent shall also immediately notify the OSC and the National Response Center at telephone number (800) 424-8802 of the incident or Site conditions. In the event that Work Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Work Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

47. In addition, in the event of any release of a hazardous substance from the Site, Work Respondent shall immediately notify the OSC and the National Response Center at (800) 424-8802. Work Respondent shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under

Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

## XV. PAYMENT OF RESPONSE COSTS

49. Payments for Future Response Costs.

a. Work Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Work Respondent a bill requiring payment that includes a reconciled Regional Itemized Cost Summary, which includes direct and indirect costs incurred by EPA and its contractors. Work Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 51 of this Settlement Agreement.

b. Work Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number A73K. Work Respondent shall send the check(s) to:

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

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

Todd Davis
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

d. The total amount to be paid by Work Respondent pursuant to Paragraph 49(a) shall be deposited by EPA in the Columbus, Nebraska FMGP Site 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.

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

51. Work Respondent may contest payment of any Future Response Costs billed under Paragraph 49 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Work Respondent shall, within the 30-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 49. Simultaneously, Work Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Work Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Work Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five days of the resolution of the dispute, Work Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 49. If Work Respondent prevails concerning any aspect of the contested costs, Work Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 49. Work Respondent shall be disbursed any balance of the escrow account. The

dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Work Respondent's obligation to reimburse EPA for its Future Response Costs.

## XVI. DISPUTE RESOLUTION

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

53. If Work Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 30 days of such action, unless the objection(s) has/have been resolved informally. EPA and Work Respondent shall have 30 days from EPA's receipt of Work Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

54. Any agreement reached by EPA and Work Respondent pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Work Respondent are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director of EPA Region 7 Superfund level or higher will issue a written decision on the dispute to Work Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Work Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Work Respondent shall fulfill

the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

## XVII. FORCE MAJEURE

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

56. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Work Respondent shall notify EPA orally within 48 hours of when Work Respondent first knew that the event might cause a delay. Within five days thereafter, Work Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Work Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Work Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Work

Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

## XVIII. STIPULATED PENALTIES

58. Work Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 59 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Work Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

59. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue per violation per day for failure to submit to EPA any submittal required by the Settlement Agreement, SOW or RAWP by the date required:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $150 | 1st through 14th day |
| $250 | 15th through 30th day |
| $500 | 31st day and beyond |

b. The following stipulated penalties shall accrue per violation per day for failure to submit a progress report by the date required:

| Penalty Per Violation Per Day | Period of Noncompliance |
|---|---|
| $50 | 1st through 14th day |
| $100 | 15th through 30th day |
| $150 | 31st day and beyond |

c. The following stipulated penalties shall accrue per violation per day for material failure to complete the Work specified in the Settlement Agreement, SOW or RAWP as required, for days after Work Respondent receives notice of such material failure from EPA:

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

d. The following stipulated penalties shall accrue per violation per day for failure to pay Future Response Costs as required:

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

60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Work Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official at the Division Director of EPA Region 7 Superfund level or higher, under Paragraph 54 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

62. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Work Respondent's receipt from EPA of a demand for payment of the penalties, unless Work Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency, Region 7
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis Missouri 63197-9000

shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A73K, the EPA Docket Number CERCLA-07-2012-0022, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 49.

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

64. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision. If Work Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Work Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 60. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Work Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections

106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 68. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

## XIX. COVENANT NOT TO SUE BY EPA

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

## XX. RESERVATIONS OF RIGHTS BY EPA

66. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to

prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as expressly provided in this Settlement Agreement and subject to Section XIX, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Work Respondent or Owner Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

a. liability for failure by Work Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Future Response Costs;

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

d. criminal liability;

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

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

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

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

## XXI. COVENANTS NOT TO SUE BY WORK RESPONDENT

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

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

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

Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or Future Response Costs.

Except as provided in Paragraph 71 (Claims Against De Micromis Parties), 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 any of the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 67.a (liability for failure to meet a requirement of the Settlement Agreement) or 67.d (criminal liability), but only to the extent that Work Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

70. 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).

71. Claims Against De Micromis Parties. Work Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Work Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances

contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

72. The waiver in Paragraph 71 shall not apply with respect to any defense, claim, or cause of action that Work Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Work Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or;

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

## XXII. OTHER CLAIMS

73. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Work Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Work Respondent or its directors, officers, employees, agents, successors,

representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

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

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

## XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

76. Except as provided in Paragraph 71 (Claims Against De Micromis Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 71 (Claims Against De Micromis Parties), 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 Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

77. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Work Respondent and Owner Respondent are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Work Respondent and Owner Respondent have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs.

78. Work Respondent and Owner Respondent shall, with respect to any suit or claim brought by it individually or jointly with the other, for matters related to this Settlement Agreement, notify EPA in writing no later than 10 days after the initiation of such suit or claim. Work Respondent and Owner Respondent shall, with respect to any suit or claim brought against it individually or jointly with the other, for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Work Respondent and Owner 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, concerning it individually or jointly with the other, for matters related to this Settlement Agreement.

## XXIV. INDEMNIFICATION

79. Work Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or

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

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

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

## XXV. INSURANCE

82. At least ten days prior to commencing any on-Site work under this Settlement Agreement, Work Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance ($1,000,000 per event/$2,000,000 annual aggregate) and automobile insurance ($1,000,000 combined single limit), naming EPA as an additional insured. Within the same time period, Work Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Work Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Work Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Work Respondent in furtherance of this Settlement Agreement. If Work Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Work Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## XXVI. FINANCIAL ASSURANCE

83. Within 30 days of the Effective Date, Work Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $2.1 million in one or more of the following forms, in order to secure the full and final completion of the Work by Work Respondent:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;

c. a trust fund administered by a trustee acceptable in all respects to EPA; and/or

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work.

84. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Work Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 83 above. In addition, if at any time EPA notifies Work Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Work Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Work Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

85. If, after the Effective Date, Work Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 83 of this Section, Work Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by EPA and Work Respondent, reduce the amount of the financial security

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

## XXVIII. ADDITIONAL REMOVAL ACTION

90. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Work Respondent of that determination. Unless otherwise stated by EPA, within 60 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Work Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII, Work Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

## XXIX. NOTICE OF COMPLETION OF WORK

91. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including holders' enforcement of proprietary institutional controls, maintenance of vapor intrusion controls, maintenance of Site cover, payment of Future Response Costs, and record retention, EPA will provide written notice to Work Respondent. If EPA reasonably determines that any such Work has not been completed

in accordance with this Settlement Agreement, EPA will notify Work Respondent, provide a list of the deficiencies, and require that Work Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Work Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Work Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

## XXX. INTEGRATION/APPENDICES

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

Appendix A: Removal Action Memorandum

Appendix B: Site Map

Appendix C: Statement of Work

Appendix D: Guidance Documents

Appendix E-1: Proprietary Institutional Control for Site Property

Appendix E-2: Proprietary Institutional Control for Property not owned by Work Respondent or Owner Respondent

## XXXI. SIGNATURE BY PARTIES

93. This Settlement Agreement may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and same document. The undersigned representative(s)

of Work Respondent and Owner Respondent certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

## XXXII. EFFECTIVE DATE

94. This Settlement Agreement shall become effective upon receipt by Work Respondent and Owner Respondent of a fully executed copy of this Settlement Agreement.

IT IS SO AGREED.

For the United States Environmental Protection Agency:

(Cecilia Tapia)
Cecilia Tapia
Director
Superfund Division

DATE: 5/11/12

Robert W. Richards
Attorney
Office of Regional Counsel

DATE: 5/8/12

In the Matter of Columbus Former Manufactured Gas Plant Site, Docket No. CERCLA-07-2012-0022. Proceedings under Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9604, 9606, 9607, and 9622).

For Centel Corporation, a Delaware Corporation:

R. Steward Ewing

Name: R. Steward Ewing

4/18/12

DATE:

Executive Vice President/CFO

Title

In the Matter of Columbus Former Manufactured Gas Plant Site, Docket No. CERCLA-07-2012-0022. Proceedings under Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9604, 9606, 9607 and 9622).

For Black Hills/Nebraska Gas Utility Company LLC, a Delaware Corporation:

Name:

DATE: 5-1-2012

VP OPERATIONS
Title:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 30 2010

**ENFORCEMENT ACTION MEMORANDUM**

**SUBJECT:** Request for a Non-Time-Removal Action at the Columbus Former Manufactured Gas Plant Site, Columbus, Platte County, Nebraska

**FROM:** Todd H. Davis, Remedial Project Manager
Iowa/Nebraska Remedial Branch

**THRU:** Pradip Dalal, Chief
Iowa/Nebraska Remedial Branch

Robert Richards, Attorney
Office of Regional Counsel

**TO:** Cecilia Tapia, Director
Superfund Division

| | |
|---|---|
| CERCLIS ID#: | NED 986375087 |
| SITE ID#: | A73K |
| CATEGORY OF REMOVAL: | Non-Time-Critical |
| NATIONALLY SIGNIFICANT: | No |

## I. PURPOSE

The purpose of this Enforcement Action Memorandum is to request approval of the proposed actions for a non-time-critical removal under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, at the Columbus Former Manufactured Gas Plant site (Site) in Columbus, Platte County, Nebraska. This Enforcement Action Memorandum incorporates the approved March 2010 Engineering Evaluation/Cost Analysis (EE/CA) and subsequent public comments from the EE/CA public comment period. The Responsiveness Summary to the public comments is attached to this Enforcement Action Memorandum.

The removal action for on-site contaminated soils is excavation of contaminated soils down to groundwater, off-site disposal at a licensed landfill, backfilling the excavated areas with clean fill, and implementation of institutional controls; or off-site thermal desorption of contaminated soils, and implementation of institutional controls.

30190137
Superfund

a.0

APPENDIX A

The removal action for off-site contaminated soils is excavation of contaminated soils down to 10 feet below ground surface (bgs), off-site disposal at a licensed landfill, backfilling the excavated areas with clean fill, and implementation of institutional controls; or off-site thermal desorption of contaminated soils, and implementation of institutional controls.

The removal action for groundwater is groundwater monitoring as a post-removal site control. Preliminary remediation goals (PRGs) for soil have been developed in the EE/CA in accordance with EPA guidance. The PRGs are chemical specific and were developed for soils between 0-10 feet bgs and 10 feet bgs to groundwater.

This removal action is estimated to cost $2,020,000 and will be conducted by the potentially responsible parties (PRPs) Centel Corporation and Black Hills/Nebraska Gas Utility Company, LLC. The actions taken by the PRPs will be under the oversight of the U. S. Environmental Protection Agency (EPA). There are no significant or precedent-setting issues associated with this response action.

## II. SITE CONDITIONS AND BACKGROUND

### A. Site description

#### 1. Removal Site Evaluation (RSE), June 2006

The Columbus Gas Company manufactured utility gas at the Site from 1908 until 1932 when the plant ceased operations and natural gas distribution began. All above-grade former manufactured gas plant (MGP) structures have been removed. The 1948 Sanborn Map shows that all MGP structures were removed from the Site. Waste products of the process include coal tar and other coal-tar-related contaminants which are present in the soil and groundwater at the Site.

An RSE was completed in October 2005. The RSE investigation identified the gas holder, gas tank foundation, and the east tank of the western tar tank pair. The gas tank appears to have been an above-ground structure and the gas holder and tar tank were determined to be below-ground structures. Source material was found in the tar tank. Source material was not encountered in the gas holder. Tar-saturated gravel was observed approximately 10 feet bgs at Soil Probe 8. Deep Soil Probes 28, 30, and 34 observed saturated tar 35 feet bgs. Off-site Soil Probe 37 found tar-coated material at 36 and 46 feet bgs.

Soil contamination includes coal-tar contaminated materials including but not limited to:

- Volatile organic compounds (VOCs) including benzene, toluene, ethylbenzene, and xylenes (BTEX);
- Semi-VOCs;
- Cyanide; and
- Polynuclear aromatic hydrocarbons (PAHs).

Groundwater contamination includes coal tar contaminated materials including but not limited to:

- VOCs including benzene;
- PAHs; and
- Dense nonaqueous phase liquids (DNAPL).

The Site is located within the boundaries of the 10th Street Superfund Site (10th Street Site). The 10th Street Site is limited to tetrachloroethylene (PERC) and trichloroethene (TCE), which are both chlorinated VOCs; contamination from historical dry cleaning locations; or other potential sources. Chlorinated VOCs found at the Site indicate that the two contamination plumes are co-mingled.

The Site is located within the boundaries of the Columbus Institutional Control Area, which prevents exposure to the contaminated groundwater by preventing the installation of domestic water wells. The city of Columbus' municipal water supply wells are located approximately 2,100 feet west/southwest of the Site. Groundwater extraction wells for the 10th Street Site are located north, northwest, and west of the Site. Extracted groundwater is treated with an air stripper and released to the city of Columbus for use in the city's municipal water supply.

## 2. Physical location

The city of Columbus is in the east central portion of the state of Nebraska in Platte County. The Site is in the south central portion of the city at 1169 22nd Avenue, and occupies approximately one-half acre in the southwest quarter of Section 19, Township 17 North, Range 1 East, Latitude 41.427846, Longitude 97.353909.

The city of Columbus' average elevation above sea level is 1,450 feet. A church is located approximately 300 feet south of the Site. A daycare facility is located approximately 400 feet southeast of the Site, potentially above the groundwater contamination plume. Four residential properties are located adjacent to the south and southeast of the Site.

The Least Tern, Piping Plover, and Bald Eagle were identified as endangered or threatened species in the Columbus, Nebraska, area; however, none of these species would be expected to be present in an urban environment.

## 3. Site characteristics

The Site is a former MGP. The Site covers 0.5 acres comprising the former MGP and is owned by Black Hills/Nebraska Gas Utility Company, LLC, and currently is not in use. Two buildings formerly used for storage and operations, and a communications tower are present on the Site. All above-grade former MGP-related structures have been removed. The majority of the Site is covered with asphalt surfacing with limited areas covered by concrete. Access is restricted by an 8-foot-tall, chain-link security fence.

The Site is bordered to the north by railroad tracks, to the west by an industrial property, to the south by three adjacent residential properties, and to the east by a commercial property.

The Site was operated by the Columbus Gas Company and Central West Public Service Company of Nebraska until 1936. Central Electric and Telephone Company (predecessor of Centel) owned the Site from 1936 to 1976. The Minnesota Gas Company owned the Site from 1976 to 1993. Peoples Natural Gas, a division of UtiliCorp United, Inc., purchased the Site in 1993 and changed its name to Aquila, Inc., in 2002. Black Hills/Nebraska Gas Utility Company, LLC, purchased the property from Aquila, Inc., in 2008.

**4. Release or threatened release into the environment of a hazardous substance, or pollutant, or contaminant**

PAHs including naphthalene, VOCs including benzene, and other hazardous wastes, pollutants, and/or contaminants from MGP-related processes have been found in the soil at the Site above acceptable health-based levels.

PAHs including naphthalene, VOCs including benzene and toluene, and other hazardous wastes, pollutants, and/or contaminants from MGP-related processes have been found in the groundwater at the Site above acceptable health-based levels.

The above compounds are listed as hazardous substances pursuant to 40 CFR § 302.4. As such, they are "hazardous substances" as defined in section 101(14) of CERCLA 42 U.S.C. § 9601(14).

**5. National Priorities Listing (NPL) status**

This Site is not on the NPL.

## B. Other Actions to Date

**1. Previous actions**

No previous actions have taken place at the Site.

**2. Current actions**

No current actions are taking place at the Site.

## C. State and Local Authorities' Roles

**1. State and local actions to date**

No state or local actions have been taken to date.

### 2. Potential for continued state/local response

The Nebraska Department of Environmental Quality (NDEQ) is expected to continue in a support role.

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

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

Surface soils are contaminated with MGP-related contaminants including coal tar, VOCs including BTEX, and semi-VOCs including PAHs. Contaminants from MGP processes have also reached the groundwater at the Site. The groundwater is being used as a source of drinking water for the city of Columbus.

Soil samples collected at the Site found MGP-related contaminants including source material with concentrations of naphthalene at 16,000 miligrams/kilogram (mg/kg) and benzene at 1,200 mg/kg. Soil with coal-tar/DNAPL staining was observed across the Site. Groundwater samples exceeding Maximum Contaminant Levels (MCLs) include benzene at 1,300 micrograms/Liter (ug/L) with a MCL of 5 ug/L; toluene at 2,100 ug/L with an MCL of 1,000 ug/L; and benzo(a)pyrene at 16 ug/L with an MCL of 0.2 ug/L.

Contaminants detected in soil gas at the Site boundaries are present at levels that may cause adverse health effects through exposure from soil vapor intrusion. The contaminants included benzene, a known human carcinogen; ethylbenzene, a probable human carcinogen; and naphthalene, a possible human carcinogen. A condition increasing the likelihood that residents will be exposed to these contaminants is that the residential properties are located across a 20-foot-wide alley from the Site, and the average depth to groundwater is approximately 15 feet bgs.

**40 CFR § 300.415(b)(2)(ii) – Actual or potential contamination of drinking water supplies or sensitive ecosystems.**

The groundwater aquifer under the Site is used as the source of drinking water for the city of Columbus. The city's well fields are located approximately 2,100 feet west/southwest of the Site. One of the extraction wells for the 10th Street Site is located approximately 600 feet north of the Site. Groundwater extracted by the 10th Street Site extraction well is treated and used for drinking water by the city of Columbus.

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

Contaminated soils exceeding the PRGs are located at the Site from the soil surface down to groundwater. Contaminants including MGP-related contaminants including coal-tar/DNAPL have migrated and are found in the near-surface and subsurface soil and groundwater at the Site.

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

During a heavy precipitation event, the increased surface water flow and infiltration may cause a release to groundwater or surface soil contamination to off-site receptors at the residential properties adjacent to the Site.

**40 CFR § 300.415(b)(2)(vii) – The availability of other appropriate federal or state response mechanisms to respond to the release.**

No other federal or state response mechanism is available at this time. NDEQ has been involved in the regulatory process for this Site in an advisory capacity and is expected to continue to provide document review support.

EPA is the lead agency for addressing the Site under CERCLA. EPA plans to negotiate an Administrative Order with the Respondents to conduct a removal action.

## IV. ENDANGERMENT DETERMINATION

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

## V. PROPOSED ACTIONS AND ESTIMATED COSTS

### A. Proposed Actions

#### 1. Proposed action description

The threat of exposure due to the hazardous substances present at the Site and in the groundwater at and downgradient from the Site can be prevented by soil removal and groundwater monitoring as a post-removal Site control. The removal action is protective of human health and the environment.

The removal action for on-site contaminated soils is excavation of contaminated soils down to groundwater, off-site disposal at a licensed landfill, backfilling the excavated areas with clean fill, and implementation of institutional controls; or treatment by off-site thermal desorption, and implementation of institutional controls.

The removal action for off-site contaminated soils is excavation of contaminated soils down to 10 feet bgs, off-site disposal at a landfill, backfilling the excavated areas with clean fill, and implementation of institutional controls; or treatment by off-site thermal desorption, and implementation of institutional controls.

The removal action to address contaminated groundwater at the Site is groundwater monitoring as a post-removal site control.

At the time of the soil excavation, confirmatory soil sampling will be conducted at multiple depths along the final limits of the excavation to document that the cleanup levels, as outlined in the March 2010 EE/CA, have been achieved. Soil sampling will also be conducted to confirm that MGP-related contaminants have not migrated to the four residential properties adjacent to the Site. Soil samples will be collected between 6 inches and 10 feet bgs along the city's right-of-way immediately adjacent to the four residential properties located south of the Site.

PRGs are chemical-specific concentration goals for specific media and land use combinations at Superfund sites. The PRGs serve as a target to use during the initial development, analysis, and selection of cleanup alternatives. The removal action will use the following PRGs as the Cleanup Levels to confirm that Soil Contaminants of Concern have been removed.

PRGs for Soil Contaminants of Concern (COCs):

| Chemical of Concern | Commercial - Industrial Worker PRG (0-2 feet) (mg/kg) | Construction Worker PRG (2-10 feet) (mg/kg) | Construction Worker PRG (10 feet - groundwater) (mg/kg) |
|---|---|---|---|
| Benzene | 6.0 | 21.0 | 210.0 |
| Benzo(a)anthracene | 2.0 | 21.0 | 210.0 |
| Benzo(a)pyrene | 0.2 | 2.0 | 20.0 |
| Benzo(b)fluoranthene | 2.0 | 21.0 | 210.0 |
| Benzo(k)fluoranthene | 21.0 | 214.0 | 2140.0 |
| Chrysene | 210.0 | 2136.0 | 21360.0 |
| Dibenzo(a,h)anthracene | 0.2 | 2.0 | 20.0 |
| Indeno(1,2,3-cd)pyrene | 2.0 | 21.0 | 210.0 |
| Naphthalene | 20.0 | 98.0 | 98.0 |
| Pyrene | 17000.0 | 4578.0 | 4578.0 |

The PRPs have proposed removing the operations building and communications tower at the Site to improve access to the Site for removal equipment. Asbestos-containing material will be assessed and abated consistent with state and federal regulations prior to the demolition of the structures.

At the time of the soil excavation, the PRPs will conduct additional sampling to further assess the risk of vapor intrusion.

**2. Contribution to remedial performance**

Currently, no remedial actions are planned at the Site. Decisions regarding future actions will be based on the results of the vapor intrusion assessment. This removal action is expected to be appropriate and consistent with any future potential remedial actions.

**3. Engineering Evaluation/Cost Analysis (EE/CA), March 2010**

The EE/CA identified other alternative actions for the Site:

Excavation, deep excavation, and groundwater monitoring.

This alternative incorporates deep excavation of impacted materials within the Site boundary to remove contaminated materials below the water table. Though the reduction could reduce the persistence of the plume, the risk would be the potential of subsidence to adversely impact the adjacent residential and commercial structures that surround the Site.

In situ stabilization and groundwater monitoring.

This alternative incorporates encapsulating the contaminated soil, reducing the migration of contaminants to the groundwater and reducing exposure to workers at the Site. The stabilized soil would restrict future excavation at the Site and limit the Site's future use.

Excavation, in situ chemical oxidation, and groundwater monitoring.

This alternative includes excavation of surface soils and the injection of a chemical oxidant into the groundwater. The chemical oxidant would mobilize the contaminants in the groundwater which could potentially spread beyond the current, limited plume boundaries.

**4. Description of alternative technologies**

EPA's policy regarding the use of alternative technologies for removal actions as described in the Office of Solid Waste and Emergency Response Directive 9380.2-1, "Administrative Guidance for Removal Program Use of Alternatives to Land Disposal," is that

the alternative technology must provide for timely response and protection of human health and the environment. The policy also establishes three criteria in considering the use of alternative technologies: effectiveness, implementability, and cost. At this time, conventional removal and disposal technologies are believed to represent the most expeditious and cost-effective approaches that can be employed at the Site.

### 5. Applicable or relevant and appropriate requirements

40 CFR § 300.415(j) of the National Contingency Plan (NCP) requires removal actions to attain applicable or relevant and appropriate requirements (ARARs) under federal or state environmental or facility siting laws to the extent practicable considering the exigencies of the situation. Other state and federal advisories, criteria, or guidance may, as appropriate, be considered in formulating the removal action. In determining whether compliance with ARARs is practicable, EPA may consider factors such as the urgency of the situation or the scope of the removal action to be conducted.

Federal ARARs

- OSHA 29 CFR § 1910.120 regulations govern worker safety and health in industry.
- OSHA 29 CFR § 1926 Construction Standards regulations govern worker safety and health in construction. These regulations cover all health and safety requirements at sites where hazardous substances are located.
- The Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., substantive requirements pertaining to waste packaging, container storage, removal and transportation requirements, and land disposal requirements,
- 40 CFR parts 257, 261, 262, 263, 264, 265 and 268 may be relevant to the identification, definition, on-site disposal, treatment, storage, transportation and disposal of wastes from the Site.

State ARARs

- On April 6, 2007, the NDEQ sent a letter to EPA containing the state of Nebraska ARARs applicable to the Site.
- NDEQ Voluntary Cleanup Standards may be relevant for soil and groundwater cleanup goals.
- Title 129 Nebraska Air Regulations may be relevant for treatment processes with atmospheric emissions.
- Title 128 Nebraska Hazardous Waste Regulations for the treatment, storage, or disposal of hazardous waste.

- Title 118 Nebraska Ground Water Protection may be appropriate for groundwater monitoring and MCLs.

- Title 132 Integrated Solid Waste Management Regulations may be relevant for the disposal of any non-hazardous waste generated during removal activities.

**6. Project schedule**

Cleanup activities will be initiated at the Site as soon as possible following approval of the Enforcement Action Memorandum and entering into an Administrative Order on Consent for Removal Actions. On-site activities will take approximately eight weeks and will be designed to occur while outside temperatures are cold in order to reduce air emissions.

**B. Estimated Costs**

This is a PRP-lead, non-time-critical removal action that is planned to be performed pursuant to an Administrative Order on Consent. It is anticipated that the PRPs' costs associated with conducting this non-time-critical removal action will be approximately $2,020,000.

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

Should these actions be delayed or not taken, contaminants from the Site will remain in surface and subsurface soils and continue to migrate to the groundwater. Soil contaminants will remain a threat to workers and nearby residents at the Site.

## VII. OUTSTANDING POLICY ISSUES

The removal involves no nationally significant or precedent-setting issues.

## VIII. ENFORCEMENT

The PRPs identified with respect to the Site are Centel Corporation and Black Hills/Nebraska Gas Utility Company, LLC. It is anticipated that the PRPs will enter into an Administrative Order on Consent with EPA which requires the PRPs to fund and carry out the removal actions described in this Enforcement Action Memorandum. The work will be performed under EPA oversight, pursuant to an EPA-approved work plan. For additional information see the attached Enforcement Addendum.

The cost of the removal action to be conducted by the PRPs is estimated at approximately $2,020,000. The only EPA costs for this removal action are direct and indirect costs. The expenditure of extramural funds is not anticipated. EPA direct and indirect costs, although cost recoverable, do not count toward the total Removal project ceiling for this removal action.

## IX. RECOMMENDATION

This is a PRP-lead, non-time-critical removal action. It is anticipated that the PRP's costs associated with conducting the removal action will be approximately $2,020,000. Any oversight costs incurred by EPA will be charged to the special account for the Site and reimbursed by the PRPs.

This decision document represents the selected removal action for the Site, in the city of Columbus, Platte County, Nebraska, and was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP, 40 CFR § 300.415(b) criteria for a removal, and your approval is recommended for the proposed removal action.

Approved:

Cecilia Tapia
Director
Superfund Division

Date 6/30/10

Attachments

Columbus FMGP Engineering Evaluation/Cost Analysis (EE/CA)

Comments and Responsiveness Summary

One Comment Letter was received for the EE/CA Report. One comment was made at the public meeting. The comments do not change the preferred alternative for the removal action at the Columbus FMGP Site.

The Comment Letter was submitted by the Nebraska Department of Environmental Quality (NDEQ). The NDEQ did not concur with the selected removal alternative stated in the EE/CA based on three comments:

1. The NDEQ, based on Nebraska Title 118, assigns the groundwater pollution occurrence as Remedial Action Class (RAC) – 1 based on the Site being located in a wellhead protection area. RAC-1 sites receive the most extensive remedial action measures including the following objectives:

   i. Source control to minimize further degradation of the groundwater.

   Response: The source, contaminated soil, is being addressed by the proposed action.

   ii. Cleanup of readily removable contamination (e.g. free product).

   Response: The source, contaminated soil, is being addressed by the proposed action.

   iii. Cleanup of dissolved groundwater contamination.

   Response: The proposed action is under the legal authority of a CERCLA Removal Action. Groundwater remediation is a long-term remedy that is not consistent with a Removal Action.

   iv. Restoration of the aquifer to maximum contaminant levels (MCLs) or risk-based levels in absence of an MCL within a reasonable timeframe (up to 20 years).

   Response: The proposed action is under the legal authority of a CERCLA Removal Action. Groundwater remediation is a long-term remedy that is not consistent with a Removal Action.

   v. Prevention of further contaminant migration in the groundwater.

   Response: The proposed action is under the legal authority of a CERCLA Removal Action. Groundwater remediation is a long-term remedy that is not consistent with a Removal Action.

vi. Provision of alternative water supplies to affected residences.

Response: The city of Columbus provides drinking water to residential properties. The Site is located within the boundaries of the Columbus Institutional Control Area (CICA) which prevents exposure to the contaminated groundwater by preventing the installation of domestic water wells.

vii. Use of institutional controls (ICs) to minimize the potential for human exposure to contamination and to protect the integrity of the remedial action.

Response: The Proposed Action includes the use of ICs to minimize the potential for human exposure to contamination and/or protect the integrity of the remedy. The Site is located within the boundaries of the Columbus Institutional Control Area (CICA) which prevents exposure to the contaminated groundwater by preventing the installation of domestic water wells.

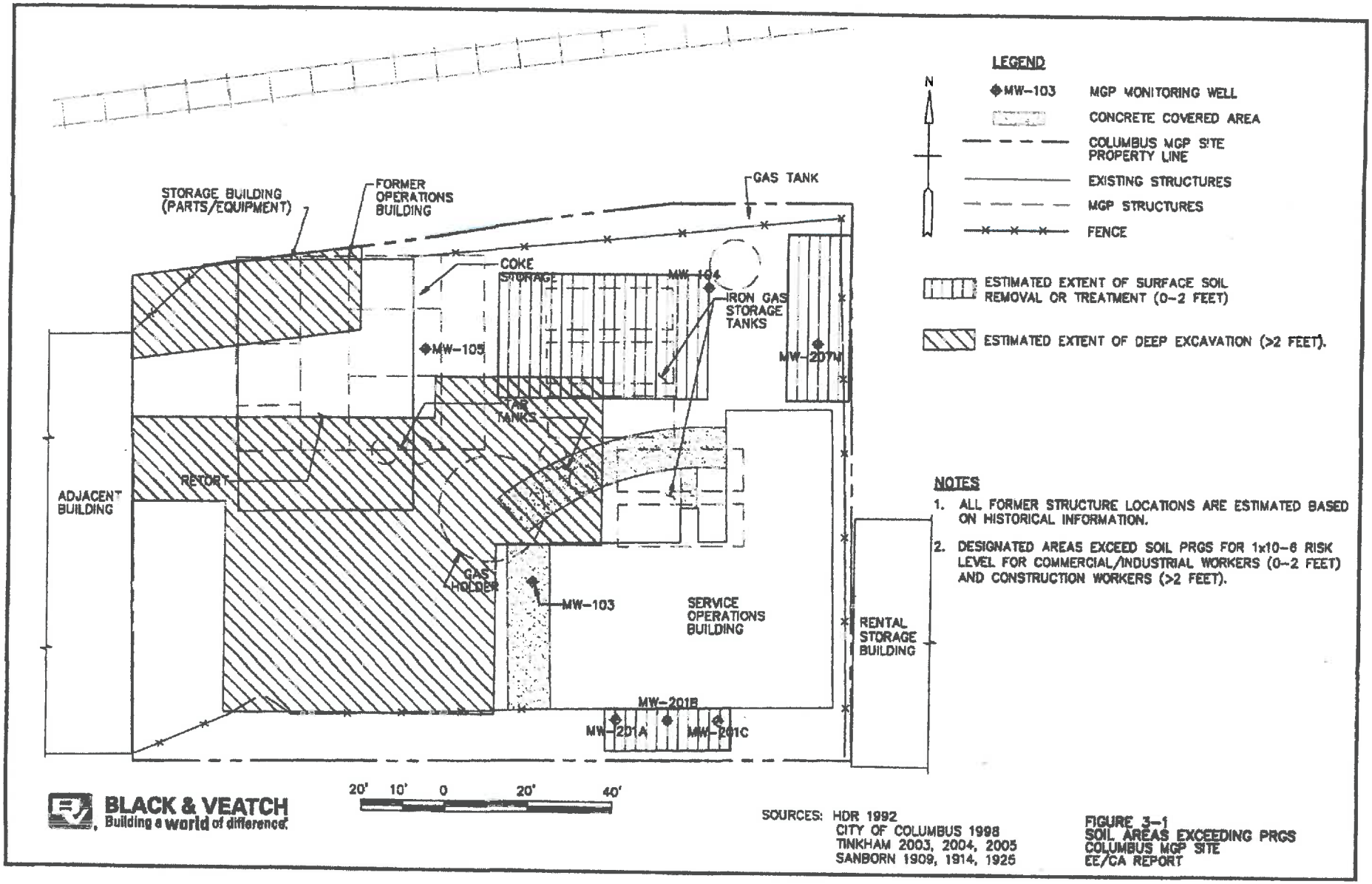
2. NDEQ does not consider deed notices to be an acceptable IC to control exposure to groundwater contamination and recommends using an environmental covenant pursuant to the Nebraska Uniform Covenants Act, Neb. Rev. Stat. § 76-2601 to 76-2613.

Response: The EPA's April 21, 2010 letter to the PRPs specifically stated that the Nebraska Environmental Covenants Act shall be used to create ICs. This letter is in the Administrative Record.

3. NDEQ states that remediation waste generated from the planned excavation is managed in accordance with Title 128, Nebraska Hazardous Waste Regulations and Title 132, Integrated Solid Waste Management Regulations.

Response: All Work Plans for investigations conducted at the Site have referred to both regulations for compliance with applicable and relevant State regulations. Future work conducted at the Site will continue to refer to and comply with these regulations as applicable and relevant State regulations.

One comment was made at the public meeting. The comment, by EPA, clarified that any thermal desorption would occur off-site.

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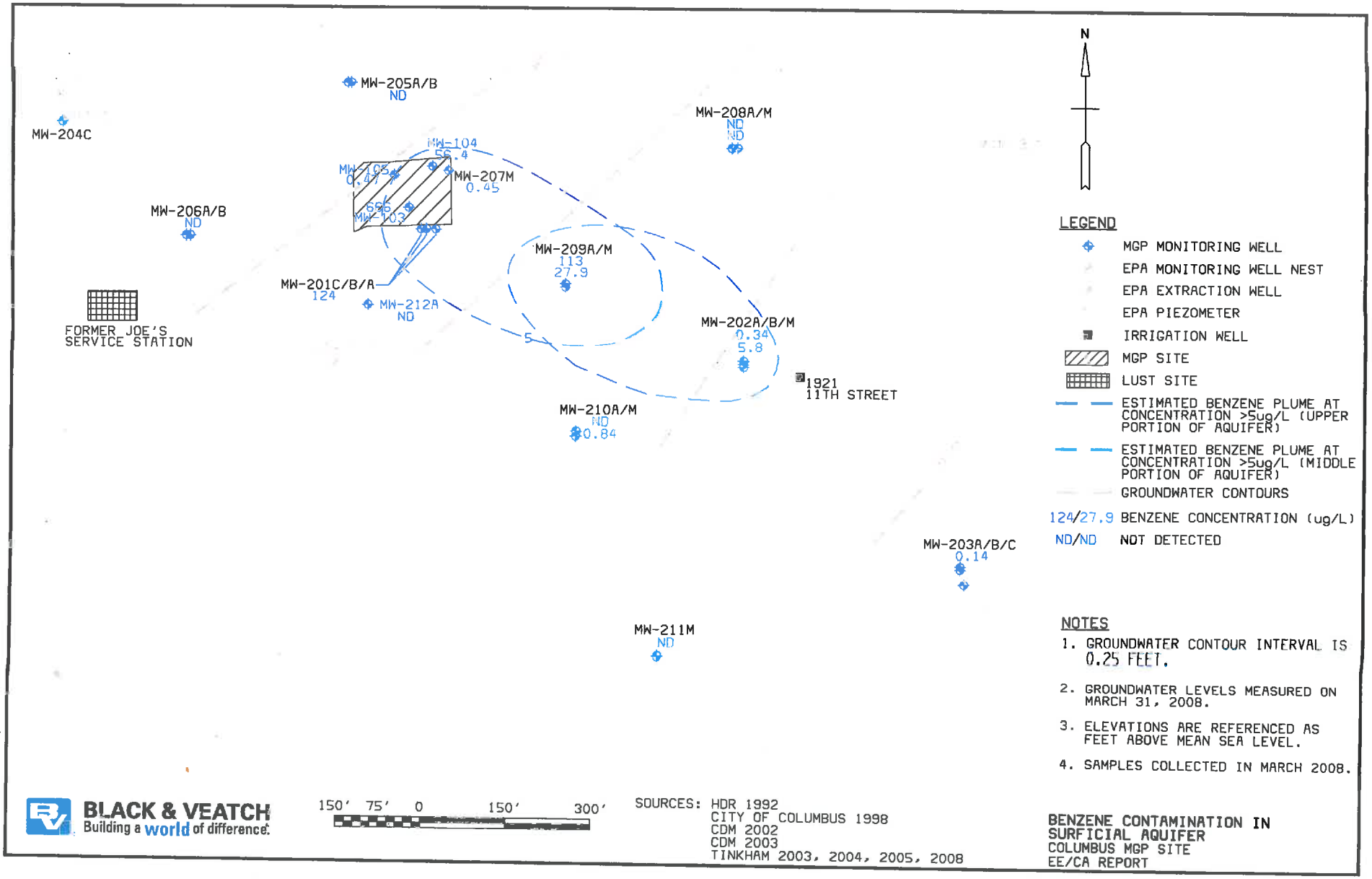
SOURCES: HDR 1992
CITY OF COLUMBUS 1998
TINKHAM 2003, 2004, 2005
SANBORN 1909, 1914, 1925

FIGURE 3-1
SOIL AREAS EXCEEDING PRGS
COLUMBUS MGP SITE
EE/CA REPORT


MW-205A/B
ND
MW-204C
MW-208A/M
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MW-104
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MW-105
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MW-207M
0.45
MW-206A/B
ND
MW-103
696
MW-209A/M
113
27.9
MW-201C/B/A
124
MW-212A
ND
FORMER JOE'S
SERVICE STATION
MW-202A/B/M
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5.8
1921
11TH STREET
MW-210A/M
ND
0.84
MW-203A/B/C
0.14
MW-211M
ND
N
LEGEND
MGP MONITORING WELL
EPA MONITORING WELL NEST
EPA EXTRACTION WELL
EPA PIEZOMETER
IRRIGATION WELL
MGP SITE
LUST SITE
ESTIMATED BENZENE PLUME AT CONCENTRATION >5ug/L (UPPER PORTION OF AQUIFER)
ESTIMATED BENZENE PLUME AT CONCENTRATION >5ug/L (MIDDLE PORTION OF AQUIFER)
GROUNDWATER CONTOURS
124/27.9 BENZENE CONCENTRATION (ug/L)
ND/ND NOT DETECTED
NOTES
1. GROUNDWATER CONTOUR INTERVAL IS 0.25 FEET.
2. GROUNDWATER LEVELS MEASURED ON MARCH 31, 2008.
3. ELEVATIONS ARE REFERENCED AS FEET ABOVE MEAN SEA LEVEL.
4. SAMPLES COLLECTED IN MARCH 2008.
BLACK & VEATCH
Building a world of difference.
150' 75' 0 150' 300'
SOURCES: HDR 1992
CITY OF COLUMBUS 1998
CDM 2002
CDM 2003
TINKHAM 2003, 2004, 2005, 2008
BENZENE CONTAMINATION IN SURFICIAL AQUIFER
COLUMBUS MGP SITE
EE/CA REPORT

APPENDIX B

# APPENDIX C

# STATEMENT OF WORK

# COLUMBUS FORMER MANUFACTURED GAS PLANT

# NON-TIME CRITICAL REMOVAL ACTION

1. Purpose

   1.1. The purpose of this Statement of Work (SOW) for the Columbus Former Manufactured Gas Plant Site (Site) is to define the tasks, standards and guidelines which will be followed by the Respondents: (1) to conduct a removal action to remove contaminated surface and subsurface soil from the Site and (a) properly dispose of the contaminated surface and subsurface soil, or (b) conduct thermal treatment of the contaminated surface soil; (2) to implement Institutional Controls (ICs) to minimize the potential for human exposure to contamination and/or protect the integrity of the remedy; (3) conduct groundwater monitoring as a post-removal Site control, and; (4) conduct additional vapor intrusion assessment at residential properties adjacent to the Site during the removal. In accomplishing the above tasks, the Respondents shall comply with the provisions of the corresponding Administrative Order on Consent (Consent Order) between the United States Environmental Protection Agency (EPA) and Centel Corporation (Respondent) and Black Hills Energy (Respondent), this SOW, CERCLA, the National Contingency Plan (NCP) and EPA guidance (including, but not limited to the guidance documents referenced in this SOW). The schedule and statement of work to be performed under the Consent Order is set forth hereinafter.

2. Work to be Performed

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

   - Preparation of Removal Action Work Plan (RAWP)
   - Performance of Removal Action
   - Reports

3. Removal Action Work Plan

3.1. Within sixty (60) calendar days of the effective date of the Order, the Respondents shall prepare and submit to EPA for review and approval, a Removal Action Work Plan (RAWP) that shall describe the proposed tasks and schedules associated with excavation, processing and treatment or off-Site disposal of soils and any other FMGP structures, the establishment of institutional controls in accordance with the Nebraska Uniform Environmental Covenants Act, further evaluation of the vapor intrusion pathway at the four (4) adjacent residential properties or additional properties according to data obtained during the vapor intrusion investigation, and the establishment of a groundwater monitoring plan. The RAWP shall be prepared to require the response action to be performed in accordance with EPA standards set forth and shall include the following information:

3.1.1. A clear and concise description of roles, relationships and assignment of responsibilities among the Respondents, Project Coordinator, Quality Assurance Officer, Removal Supervisor and Removal Personnel;

3.1.2. A proposed schedule for the removal action that will require commencement within 30 days of EPA's approval of the RAWP;

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

3.1.4. Plans for conducting air monitoring for emissions during removal activities including contingency plans in the event that emissions exceed health-based standards, and plans for a water containment and treatment program to be used during Site excavation and material handling activities;

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

3.1.6. A description of any traffic control plans with concurrence from the city of Columbus, Nebraska, for any traffic disruption caused during the removal action;

3.1.7. A description of the methods proposed to be used to control odors, fugitive dust and/or volatilization of BTEXs and PAHs from excavation at the Site;

3.1.8. A description of the method of transportation for all contaminated materials, manifesting requirements in accordance with federal and state Department of Transportation regulations, and material quantity accounting procedures. Disposal of contaminated materials must be in compliance with CERCLA's Off-Site Rule. In addition, Respondents shall provide written notice prior to any out-of-state shipment of waste material;

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

3.1.10. A description of Site restoration requirements and completion of removal action. This description shall include all work necessary to restore property to its original pre-removal condition, including but not limited to the placement of clean fill, trees, reseeding or placement of sod on grass areas, and the replacement of driveways, walkways, streets, alleys, parking areas;

3.1.11. A plan for identifying and complying with applicable permitting requirements and environmental statutes; and

3.1.12. A plan for implementing and conducting groundwater monitoring.

3.2. As components of the RAWP, Respondents shall develop and submit the following project plans to support field activities:

- Quality Assurance Project Plan (QAPP);
- Sampling and Analysis Plan (SAP);
- Field Sampling Plan (FSP); and
- Health and Safety Plan (HASP)

3.2.1. A Quality Assurance Project Plan (QAPP), which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action. The QAPP shall be prepared in accordance with EPA Requirements for Quality Assurance Project Plans, EPA QA/QR-5, EPA/240/B-01/003, or the most recent version of the guidance. The EPA will also consider modification to all previously approved QAPPs submitted, reviewed and approved for this Site.

3.2.2. The Sampling and Analysis Plan (SAP) shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs to characterize the site and to further evaluate the vapor intrusion pathway at the four (4) adjacent

residential properties. Additional properties may require sampling based on the results of the vapor intrusion investigation. No field activities shall take place until EPA has reviewed and approved the SAP.

3.2.3. A Field Sampling Plan (FSP) which describes the estimated number, type, and location of samples to be collected at the Site to further define the extent of contamination or to confirm when certain actions have achieved the desired results, or to conduct tests on the material for treatability. Respondents shall include provisions for split samples provided to EPA, its contractors, or the state of Nebraska as appropriate. No less than five (5) working days notice must be given to EPA prior to collecting samples. The plan shall also include the types of analyses to be conducted for each sample and a brief rationale for collecting the sample and performing the analysis.

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

3.2.3.1. Compendium of ERT Field Analytical Procedures – Office of Emergency and Remedial Response, Publication 9360.4-04, May 1992 or the most recent EPA guidance.

3.2.3.2. Compendium of ERT Waste Sampling Procedures – Office of Solid Waste and Emergency Response, EPA/540/P-91/008, January 1991 or the most recent EPA guidance.

3.2.3.3. QA/QC Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures – Office of Emergency and Remedial Response, EPA/540/G-90/004, April 1990 or the most recent EPA guidance.

3.2.3.4. Removal Program Representative Sampling Guidance, Volume 1: Soil- Office of Emergency and Remedial Response, publication 9360.4-10, November 1991 or the most recent EPA guidance.

3.2.3.5. Compendium of ERT Soil Sampling and Surface Geophysics Procedures – Office of Solid Waste and Emergency Response, EPA/540/P-91/006, January 1991 or the most recent EPA guidance.

3.2.3.6. The FSP shall require that all samples be analyzed by a laboratory that participates in a quality assurance/quality control program equivalent to that specified in "USEPA Contract Laboratory Program Statement of Work for Analysis", Exhibit E, EPA SOW No. 788, July 1988 or the most recent EPA guidance.

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

4. Performance of Removal Action

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

4.1.1. Site preparation work including building demolition, asbestos abatement, etc.

4.1.2. Excavation and off-site treatment or disposal of the contents and surrounding contaminated soils from the accessible FMGP structures as described in the EE/CA and located generally as indicated on the attached map, to remove potential source material to reduce the potential for continued release or leaching of impacts to soil and groundwater (the cleanup concentrations will be as set out in the attached table);

4.1.3. Establish controls, designed and implemented in conjunction with current and future on-site and off-site conditions to prevent exposure to impacted soil;

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

4.1.5. Establish groundwater monitoring program in accordance with the EE/CA.

4.1.6. Utilize these cleanup levels for soil contaminants of concern:

| Chemical of Concern | (0-2 feet) (mg/kg) | (2-10 feet) (mg/kg) | (10 feet – groundwater) (mg/kg) |
|---|---|---|---|
| Benzene | 6.0 | 21.0 | 210.0 |
| Benzo(a)anthracene | 2.0 | 21.0 | 210.0 |
| Benzo(a)pyrene | 0.2 | 2.0 | 20.0 |
| Benzo(b)fluoranthene | 2.0 | 21.0 | 210.0 |
| Benzo(k)fluoranthene | 21.0 | 214.0 | 2140.0 |
| Chrysene | 210.0 | 2136.0 | 2136.0 |
| Dibenzo(a,h)anthracene | 0.2 | 2.0 | 20.0 |
| Indeno(1,2,3-cd)pyrene | 2.0 | 21.0 | 210.0 |
| Naphthalene | 20.0 | 98.0 | 98.0 |
| Pyrene | 17000.0 | 4578.0 | 4578.0 |

5. Reports

5.1. Respondents shall prepare the workplans and reports set forth in Task I through Task II to accomplish the design, implementation and monitoring of the Removal Action. In addition, the Respondents shall provide the following documentation:

5.2. Periodic Progress Reports: Unless a longer time period is approved in writing by the EPA, Respondents shall submit a monthly written progress report to EPA and NDEQ on or before the 10$^{th}$ day of each month concerning actions undertaken pursuant to this Order starting from the receipt of EPA's approval of the RAWP until termination of this Order. The periodic progress reports shall be of similar content as a Pollution Report (POLREP) as described in "Superfund Removal Procedures, Removal Response Reporting: POLREPS and OSC Reports", U.S. EPA, Office of Solid Waste and Emergency Response, Publication 9360.3-03, June 1994 or the most recent EPA guidance. At a minimum, the periodic progress reports shall include the following information:

5.2.1. A summary of actions which have been taken to comply with the Consent Order during the reporting period;

5.2.2. Copies of results of sampling and tests and all other raw data received by Respondents;

5.2.3. A description of work planned for the month with scheduling related to such work and the overall project schedule for the removal;

5.2.4. A summary of problems encountered and any anticipated problems, any actual delays and solutions developed and implemented to address any actual or anticipated problems or delays; and

5.2.5. Summaries of all contacts with representatives of the local community, public interest groups, state and federal governments during the reporting period.

5.3. Final Removal Action Report. Within 90 days after completion of all Removal Work required by the Order, Respondents shall submit for EPA review and approval a Final Removal Action Report, summarizing the actions taken to comply with the Order. The Final Removal Action Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." At a minimum, the Final Removal Action Report shall include the following information:

5.3.1.1. A description of the Site: the Site location, a facility description including past and present facility operations, existing structures, surrounding land use, site physiography, including topography, geology and hydrogeology;

5.3.1.2. A description of the work performed: a summary of all Site work performed including all removal activities, any investigative activities, all laboratory analysis reports, a summary of all analytical data associated with the investigation including quality control data, and a sample results table covering all sampling;

5.3.1.3. A description of the nature and extent of contamination addressed during removal activities;

5.3.1.4. Copies of all manifests reflecting off-Site shipment of hazardous substances except samples; and

5.3.1.5. Copies of any photographs taken during the removal action.

5.3.1.6. The following certification signed by a person who supervised or directed the preparation report:

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

6. Schedule of SOW Submission

   6.1. Submit Removal Action Work Plan – within 60 days after the Effective Date of the Consent Order.

   6.2. Implement Removal Action – Within 30 days of receipt of written EPA approval of the Removal Action Work Plan.

7. Task III – Reports

   7.1. Unless a longer time period is approved in writing by the OSC/Project Manager, Respondents shall submit a monthly written report to EPA and the NDEQ concerning actions undertaken pursuant to this Order starting from the receipt of EPA's approval of the RAWP until EPA Issues the Removal Certificate of Completion.

   7.2. Submit Removal Final Report within 90 days after completion of all removal work.

354605.2

## APPENDIX D

## GUIDANCE DOCUMENTS

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

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

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

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

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

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

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

"Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA," August 1993, EPA 540-R-93-057.

"USEPA, Contract Laboratory Program National Functional Guidelines for Superfund Organic Methods Data Review," (June, 2008).

EPA 2002. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, *Draft Guidance for Evaluating the Vapor Intrusion and Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance)*, November 2002.

EPA 2008. U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, *U.S. EPA's Vapor Intrusion Database: Preliminary Evaluation of Attenuation Factors*, March 2008.

APPENDIX E-1

Space Above for Recorder's Use Only

# ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between Black Hills /Nebraska Gas Utility Company, LLC, a Delaware limited liability company, as Grantor, and Black Hills/Nebraska Gas Utility Company, LLC, a Delaware limited liability company, as Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§ 76-2601 to 76-2613.

## RECITALS:

A. Grantor is the owner of certain real property located at 1169 22nd Avenue, Columbus, Platte County, Nebraska, which is legally described on Exhibit A attached hereto (the "Property").

B. The Property was previously owned and operated by Centel Corporation, a Delaware corporation ("Centel") and its corporate predecessors for the storage of utility equipment and vehicles, and as a manufactured gas plant from about 1908 to about 1932.

C. Grantor and its corporate predecessors have used the Property for the storage of utility equipment and vehicles since acquiring the Property in February 1993.

D. The Property was identified as the site of potential releases of hazardous substances, pollutants and/or contaminants onto the ground and into the groundwater underlying the Property, and is referred to as the Columbus Former Manufactured Gas Plant Superfund site, EPA ID No. NED986375087.

E. Pursuant to a _____, 2012 Administrative Settlement Agreement and Order on Consent issued by the U.S. Environmental Protection Agency ("EPA") under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622, as amended ("CERCLA"), Centel conducted an environmental response project at the Property and certain adjoining areas. This environmental response project involved the removal and off-site disposal of

the most heavily contaminated soils at the Property, however, residual contamination remains at various depths in the saturated soils beneath the Property and in the groundwater underlying the Property and certain adjoining areas. These contaminants include polynuclear aromatic hydrocarbon ("PAH") constituents; benzene, toluene, ethylbenzene and total xylenes ("BTEX") compounds; and/or contaminants from MGP-related processes; hereinafter known collectively as "Site Contaminants."

F. Grantor and Centel entered into that certain Easement Agreement dated as of March 11, 2011, and recorded in the Office of the Register of Deeds of Platte County, Nebraska on March 25, 2011, Book 224, Page 1302, wherein Grantor granted to Centel an easement for purposes of Centel completing the following: (a) carrying out investigation and remediation work, engineering controls or institutional controls on the Property in accordance with the Administrative Settlement Agreement and Order on Consent and any such administrative or judicial orders and agreements, including those arising from or as may be ordered by a local, state or federal government, regulatory agency, or authority; or (c) carrying-out the intentions of the Allocation, Indemnification and Access Agreement dated as of March 11, 2011, by and between the Grantor and Centel.

G. As provided for in Neb. Rev. Stat. § 76-2602, the EPA is an Agency under this Environmental Covenant.

H. The administrative record for the Columbus FMGP Superfund Site is available to the public and is located at the _____ Library, _____, Columbus, Nebraska, _____, and at EPA's offices located at 901 North 5th Street, Kansas City, Kansas 66101

**NOW, THEREFORE,**

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 10 below.

1. Representations and Warranties. Grantor warrants to the other signatories to this Covenant that:

a. It is the sole fee title owner of the Property;
b. It holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
c. It has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent [by signature on this Environmental Covenant OR by a separate subordination and consent agreement attached as Exhibit ___ OR recorded at [doc/book/page]].

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to the contamination that remains on the Property and to ensure that the Property is not developed, used, maintained or operated in a manner which may result in unacceptable exposures to residual contamination.

3. Running with the Land. This Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that run with the land, and gives to the Agency the right to enforce the activity and use limitations set forth in Paragraph 4 below. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on Grantor, its successors, assigns, and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property. Acceptance of any conveyance, transfer, lease or sublease of the Property, or any part thereof, will bind each transferee, and it successors, transferees, heirs, and assigns to the terms, conditions, obligations, and limitations set forth herein during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to EPA by the transferor. Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits, or releases Grantor or Centel from their duties and obligations, if any, under the above-referenced Administrative Settlement Agreement and Order on Consent.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

   a. The Property shall not be used for residential, child care or school use.
   b. Existing remedial systems to control and/or abate vapor intrusion of Site Contaminants into any existing enclosed buildings at the Property must be operated and maintained in accordance with standards for protectiveness of human health and the environment.
   c. Any new construction of enclosed buildings at the Property must prevent, or include remedial systems to control and/or abate, vapor intrusion of Site Contaminants into any such new construction at the Property, and must be operated and maintained in accordance with standards for protectiveness of human health and the environment.
   d. Extraction and use of the ground water underlying the Property, except for investigation or remediation approved by EPA is prohibited.
   e. Except where such excavation is necessary to prevent or address a substantial previously unknown threat to human health or the environment, including without limitation a natural gas pipeline leak, any digging, drilling, excavating, constructing, earth moving, or other land disturbing activities that occur below an existing building, including any repair, renovation or demolition of existing structures on the Property that extend beyond such depth, are prohibited without five days' written notice to EPA.

5. Reserved Rights of Grantor. Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the activity and limitations set forth above.

6. Enforcement. This Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by Holder/Grantee and by the Agency in accordance with Neb. Rev. Stat. § 76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement and shall not be deemed a waiver of any right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees and damages pursuant to Neb. Rev. Stat. § 76-2611(d).

7. Rights of Access. Grantor and any then-current owner hereby grants to the Agency, their agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

8. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases, and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recording information for this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Platte County Register of Deeds.

> NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF PLATTE COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
>
> a. The Property shall not be used for residential, recreational, child care or school use.
> b. Existing remedial systems to control and/or abate vapor intrusion of Site Contaminants into any existing enclosed buildings at the Property must be operated and maintained in accordance with standards for protectiveness of human health and the environment.
> c. Any new construction of enclosed buildings at the Property must prevent, or include remedial systems to control and/or abate, vapor intrusion of Site Contaminants into any such new construction at the Property, and must be operated and maintained in accordance with standards for protectiveness of human health and the environment.

d. Extraction and use of ground water underlying the Property, except for investigation or remediation approved by EPA is prohibited.
e. Except where such excavation is necessary to prevent or address a substantial previously unknown threat to human health or the environment, including without limitation a natural gas pipeline leak, any digging, drilling, excavating, constructing, earth moving, or other land disturbing activities that extend beyond the depth of ten feet below ground surface, or that occur below an existing building, including any repair, renovation or demolition of existing structures on the Property that extend beyond such depth, are prohibited without the five days' written notice to EPA.

9. Waiver of Certain Defenses. The parties bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

10. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. § 76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the EPA, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. § 76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental Covenant shall be as provided by Neb. Rev. Stat. § 76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. § 76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

11. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

12. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the state of Nebraska.

14. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the Property, with the Platte County Register of Deeds.

15. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Platte County Register of Deeds.

16. Distribution of Environmental Covenant. Within sixty (60) days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to each person identified in Neb. Rev. Stat. §§ 76-2607(a) and 76-2608(c), including but not limited to the City of Columbus, Nebraska.

17. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Agency:

Director
Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

If to Grantor and Holder/Grantee:

Black Hills/Nebraska Gas Utility Company, LLC.
P. O. Box 1400
Rapid City, South Dakota 57709-1400

[REMAINDER OF THIS PAGE IS INTENTIONALY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

**FOR GRANTOR:**

**BLACK HILLS/NEBRASKA GAS UTILITY COMPANY, LLC**

By: _____

_____

Title: _____

STATE OF _____ )
)
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____, the _____, by _____of Black Hills/Nebraska Gas Utility Company, LLC, a Delaware limited liability company, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of the corporation by proper authority and that the instrument was the act of the corporation for the purpose therein stated.

_____
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

**FOR HOLDER/GRANTEE:**

**BLACK HILLS/NEBRASKA GAS UTILITY COMPANY, LLC**

By: _____

_____

Title: _____

STATE OF _____ )
)
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____, the _____, by _____ of Black Hills/Nebraska Gas Utility Company, LLC, a Delaware limited liability company, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of the corporation by proper authority and that the instrument was the act of the corporation for the purpose therein stated.

_____
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

**FOR AGENCY:**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

By: _____
Cecilia Tapia
Director
Superfund Division

STATE OF KANSAS )
)
COUNTY OF WYANDOTTE )

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Cecilia Tapia, the Director of the United States Environmental Protection Agency, Region 7, Superfund Division, having acknowledged that she holds the position set forth above and that she signed the instrument on behalf of the United States Environmental Protection Agency by proper authority and that the instrument was the act of such entity for the purpose therein stated.

_____
Notary Public

**EXHIBIT A**

APPENDIX E-2

Space Above for Recorder's Use Only

# ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between [individual landowner], as Grantor, and Centel Corporation, a Delaware corporation, as Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§ 76-2601 to 76-2613.

## RECITALS:

A. Grantor is the owner of certain real property located at _____, Columbus, Platte County, Nebraska, legally described as:

[legal description],

the "Property."

B. Grantor's Property is located near other property ("Source Area") previously owned and operated by Centel Corporation and its corporate predecessors for the storage of utility equipment and vehicles, and as a manufactured gas plant from about 1908 to about 1932.

C. Holder/Grantee and its corporate predecessors have used the Source Area for the storage of utility equipment and vehicles since acquiring the Source Area in February 1993.

D. The Source Area was identified as the site of potential releases of hazardous substances, pollutants and/or contaminants onto the ground and into the groundwater underlying the Property, and is referred to as the Columbus Former Manufactured Gas Plant Superfund site, EPA ID No. NED986375087.

E. Pursuant to a _____, 2012 Administrative Settlement Agreement and Order on Consent issued by the U.S. Environmental Protection Agency ("EPA"); and under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622, as amended ("CERCLA") Centel Corporation conducted an environmental response project at the Source Area and the Property. This environmental response project involved the removal and off-site disposal of the most heavily contaminated soils at the Source Area, however, residual contamination remains at various depths in the saturated soils beneath the Source Area and in the groundwater underlying the Property. These contaminants include polynuclear aromatic hydrocarbon ("PAH") constituents; benzene, toluene, ethylbenzene and total xylenes (BTEX) compounds; and/or contaminants from MGP-related processes; hereinafter known collectively as "Site Contaminants".

F. Holder/Grantee, Centel Corporation is a Delaware corporation.

G. As provided for in Neb. Rev. Stat. § 76-2602, the EPA is the Agency under this Environmental Covenant.

H. The administrative record for the Columbus FMGP Site is available to the public and is located at the _____ Library, _____, Columbus, Nebraska, _____, and at EPA's offices located at 901 North 5th Street, Kansas City, Kansas 66101

**NOW, THEREFORE,**

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 10 below.

1. Representations and Warranties. Grantor warrants to the other signatories to this Covenant that:

a. [He/She] is the sole fee title owner of the Property;
b. [He/She] holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
c. [He/She] has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent [by signature on this Environmental Covenant OR by a separate subordination and consent agreement attached as Exhibit ___ OR recorded at [doc/book/page]].

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to the

contamination that remains on the Property and to ensure that the Property is not developed, used, maintained or operated in a manner which may result in unacceptable exposures to residual contamination.

3. Running with the Land. This Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that run with the land, and gives to the Agency the right to enforce the activity and use limitations set forth in Paragraph 4 below. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on Grantor, its successors, assigns, and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property. Acceptance of any conveyance, transfer, lease or sublease of the Property, or any part thereof, will bind each transferee, and it successors, transferees, heirs, and assigns to the terms, conditions, obligations, and limitations set forth herein during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during his/her period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits, or releases Grantor from his/her duties and obligations, if any, under the above-referenced Administrative Settlement Agreement and Order on Consent.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

   a. Existing remedial systems to control and/or abate vapor intrusion of Site Contaminants into any existing enclosed buildings at the Property must be operated and maintained in accordance with standards for protectiveness of human health and the environment.
   b. Any new construction of enclosed buildings at the Property must prevent, or include remedial systems to control and/or abate, vapor intrusion of Site Contaminants into any such new construction at the Property, and must be operated and maintained in accordance with standards for protectiveness of human health and the environment.
   c. Extraction and use of the ground water underlying the Property, except for investigation or remediation approved by EPA is prohibited.
   d. Except where such excavation is necessary to prevent or address a substantial previously unknown threat to human health or the environment, including, without limitation, a natural gas pipeline leak, any digging, drilling, excavating, constructing, earth moving, or other land disturbing activities that extend beyond the depth of ten feet below ground surface, including any repair, renovation or demolition of existing structures on the Property that extend beyond such depth, are prohibited without five days' prior written notice to EPA.

5. Reserved Rights of Grantor. Grantor hereby reserves unto [himself/herself] and [his/her] successors all rights and privileges in and to the use of the Property which are not incompatible with the activity and limitations set forth above.

6. Enforcement. This Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by Holder/Grantee and by each of the Agency in accordance with Neb. Rev. Stat. § 76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement and shall not be deemed a waiver of any right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees and damages pursuant to Neb. Rev. Stat. § 76-2611(d).

7. Rights of Access. Grantor and any then-current owner hereby grants to the Holder/Grantee and/or the Agency, their agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

8. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases, and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recording information for this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Platte County Register of Deeds.

> NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF PLATTE COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
>
> a. Existing remedial systems to control and/or abate vapor intrusion of Site Contaminants into any existing enclosed buildings at the Property must be operated and maintained in accordance with standards for protectiveness of human health and the environment.
> b. Any new construction of enclosed buildings at the Property must prevent, or include remedial systems to control and/or abate,

vapor intrusion of Site Contaminants into any such new construction at the Property, and must be operated and maintained in accordance with standards for protectiveness of human health and the environment.

c. Extraction and use of ground water underlying the Property, except for investigation or remediation approved by EPA or NDEQ, is prohibited.

d. Except where such excavation is necessary to prevent or address a substantial previously unknown threat to human health or the environment, including, without limitation, a natural gas pipeline leak, any digging, drilling, excavating, constructing, earth moving, or other land disturbing activities that extend beyond the depth of ten feet below ground surface, including any repair, renovation or demolition of existing structures on the Property that extend beyond such depth, are prohibited without five days' prior written notice to EPA.

10. Waiver of Certain Defenses. The parties bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. § 76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the EPA, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. § 76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental Covenant shall be as provided by Neb. Rev. Stat. § 76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. § 76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the Property, with the Platte County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Platte County Register of Deeds.

17. Distribution of Environmental Covenant. Within sixty (60) days of the effective date, the Holder/Grantee shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to each person identified in Neb. Rev. Stat. §§ 76-2607(a) and 76-2608(c), including but not limited to the City of Columbus, Nebraska.

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Agency:

Director
Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

If to Grantor:

Resident or Occupant of:
[Property address]

If to Holder/Grantee:

Centel Corporation
[address]

If to the City of Columbus:

Mayor
City Hall
_____
Columbus, Nebraska _____

**FOR GRANTOR:**

**[Property owner name]**

Signature: _____

STATE OF _____ )
)
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by [Property owner name], having acknowledged that he/she signed the instrument and that the instrument was for the purpose therein stated.

_____
Notary Public

**FOR HOLDER/GRANTEE:**

**CENTEL CORPORATION**

By: _____

_____

Title: _____

STATE OF _____ )

)

COUNTY OF _____ )

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by _____, the _____, by _____of Centel Corporation, a Delaware corporation, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of the corporation by proper authority and that the instrument was the act of the corporation for the purpose therein stated.

_____

Notary Public

**FOR AGENCY:**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

By: _____
Cecilia Tapia
Director
Superfund Division

STATE OF KANSAS )
)
COUNTY OF WYANDOTTE )

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Cecilia Tapia, the Director of the United States Environmental Protection Agency, Region 7, Superfund Division, having acknowledged that she holds the position set forth above and that she signed the instrument on behalf of the United States Environmental Protection Agency by proper authority and that the instrument was the act of such entity for the purpose therein stated.

_____
Notary Public

IN THE MATTER OF Columbus Former Manufactured Gas Plant Site, Columbus Nebraska
Docket No. CERCLA-07-2012-0022

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copies by Certified Mail Return Receipt to:

Scott A. Young
Polsinelli Shughart PC
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211

Sarah Toevs Sullivan
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106

Dated: 5/17/12

Kathy Robinson
Hearing Clerk, Region 7