

5. This Order is also based on section 1002 of the Oil Pollution Act (OPA), 33 U.S.C. §2702, for reimbursement of costs.

II. JURISDICTION

6. The EPA issues this Order to Keller Transport, pursuant to the authority vested in the President of the United States by sections 308 and 311(e) of the CWA, 33 U.S.C. §§ 1318 and 1321(e) and also pursuant to the authority vested in the Administrator of the EPA by section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
7. The President delegated the CWA authorities cited above to the Administrator of the EPA by Executive Order 12777 (October 22, 1991). The Administrator redelegated these authorities to the Regional Administrators by EPA Delegation Nos. 2-85 and 2-13, which has been further redelegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice ("ECEJ").
8. The authority vested in the Administrator of EPA by section 7003 of RCRA, has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-B, which has been further delegated jointly to supervisors in the Legal Enforcement Program ("LEP") and either supervisors in the Technical Enforcement Program ("TEP"), ECEJ or supervisors in the Montana Office.

III. PARTIES BOUND

9. This Order shall apply to and be binding upon Respondent and Respondent's officers, directors, employees, agents, successors, assigns, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.
10. Respondent shall ensure that its contractors, subcontractors, laboratories, consultants, and representatives comply with this Order and shall be responsible for any noncompliance with this Order.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Order that are defined in RCRA, CWA, and/or OPA shall have the meaning assigned to them in those statutes. Whenever the terms listed below are used in this Order the following definitions apply:
 - a. "BTEX" shall mean benzene, toluene, ethyl benzene, and xylene.
 - b. "CWA" shall mean the Clean Water Act, 33 U.S.C. §§ 1251-1387.

- c. "Data Quality Objectives" shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.
- d. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, 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.
- e. "Discharge" shall have the meaning set forth in section 311(a)(2) of the CWA, 33 U.S.C. §1321(a)(2), and 40 CFR Part 110.1 for purposes of the work to be performed under this Order, and shall have the meaning set forth in section 1001(7) of OPA, 33 U.S.C. §2701(7), for purposes of reimbursement of cost.
- f. "Disposal" shall have the meaning set forth at section 1004(3) of RCRA, 42 U.S.C. § 6903(3).
- g. "Effective Date" shall be the date on which this Order is signed by EPA officials.
- h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or successor agencies of the United States.
- i. "Facility" shall mean the area impacted by the discharge, encompassing the area located at or near Misty Lagoon, East Shore Road, and the East Bay of Flathead Lake in Polson, Lake County, MT and depicted generally on the map shown in Respondent's April 9, 2008 Project Status Update Report. The facility shall also have the meaning as set forth in section 311(a)(10) and (a)(11) of the CWA, 33 U.S.C. §1321(a)(10) and (a)(11), and by section 1001(22) and (24) of OPA, 33 U.S.C. § 2701(22) and (24).
- j. "Hazardous Substance" shall mean any substance defined in section 311(a)(14) of the CWA 33 U.S.C. § 1321(a)(14).
- k. "Hazardous Waste" shall have the meaning set forth at section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 261.3 and 261.10.
- l. "MDEQ" shall mean the Montana Department of Environmental Quality.
- m. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan codified at 40 C.F.R. Part 300.
- n. "Navigable water" shall have the meaning set forth in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and section 1001(21) of OPA, 33 U.S.C. § 2701(21), and 40 C.F.R. Part 110.

- o. "Oil" as used in this Order shall have the meaning set forth in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), for purposes of the work to be performed under this order, and OPA section 1001(23), 33 U.S.C. § 2701(23), for purposes of reimbursement of costs.
- p. "OPA" shall mean the Oil Pollution Act, 33 U.S.C. § 2701-2761.
- q. "Order" shall mean this Administrative Order, any amendments thereto, and any documents incorporated by reference into this Order.
- r. "PAH" means polynuclear aromatic hydrocarbon.
- s. "RCRA" shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*
- t. "Respondent" shall mean Keller Transport Inc.
- u. "Solid Waste" shall have the meaning set forth at section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and 40 C.F.R. §§ 261.2 and 261.10.
- v. "Statement of Work or SOW" shall mean the statement of work for implementation of the removal activities and any modifications made in accordance with Section XI (Modifications) of this Order.
- w. "Tribes" shall mean the Confederated Salish and Kootenai Tribes.
- x. "Work" shall mean all the activities and requirements specified in this Order including, but not limited to any Statement of Work and/or Additional Work that may be required by Sections VIII and/or XVI of this Order.

V. FINDINGS OF FACT

Based on available information, EPA makes the following findings of fact:

A. Facility Overview

- 12. The Facility is located within the exterior boundaries of the Flathead Reservation.
- 13. Keller Transport is a corporation organized under the laws of, and doing business in, the State of Montana.
- 14. Keller Transport is the owner and operator of the vehicle involved in the single vehicle accident at mile marker 5.2, Montana Highway 35, near Polson, Montana, on April 2, 2008.
- 15. Flathead Lake is located less than 600 feet from the Respondent's single vehicle accident.

16. Groundwater is approximately 25 feet below the ground's surface. Groundwater flow direction is variable; however, available information suggests a northeasterly trend.

B. Background

17. On Wednesday, April 2, 2008, a tractor with tandem trailers owned by Keller Transport was northbound on Montana Highway 35 at mile marker 5.2 when it was involved in a single vehicle accident in Indian Country. The rear trailer left the roadway, struck the rock embankments and overturned. Approximately 6,380 gallons of gasoline was released from the trailer. This fuel traveled in the ditch line a distance of approximately 130 feet to the south of the point where the trailer came to rest, and 75 feet north. The fuel quickly seeped into the earth; no free product recovery was accomplished.
18. Frequent monitoring of springs and seeps along the shoreline of Flathead Lake began on April 2, 2008. This monitoring included visual and olfactory observations, field screening (photo ionization detector – an instrument capable of detecting gasoline hydrocarbon vapors)(“PID”) of water sample headspace, and laboratory analysis of water from several locations, including the community supply well located approximately 320 feet north of the site.
19. On April 3, 2008, Respondent's crews began excavating contaminated soil from the spill area digging in the ditch line adjacent to the paved roadway and constructing an interceptor trench on the west or downhill side of the roadway. A field PID was used to screen soil and delineate the extent of contamination. This screening showed that fuel had migrated beneath the paved portion of the roadway. Table 1 in Respondent's April 23, 2008 Project Status Update Report provides the sample results evidencing elevated hydrocarbons in the soils, including but not limited to BTEX and naphthalene.
20. On April 4, 2008, excavation proceeded to the west, beneath the road. Excavation in the spill area was completed on April 6, 2008. A total of approximately 1,413 tons of contaminated soil was removed. Hard rock was encountered at depths ranging from 6.5 to 12 feet at most points; clean soils were encountered at shallower depths at the north and south extent of the excavation; contaminated soil extended to, and was excavated from, depths of 20 to 21 feet at two locations: the point where the trailer came to rest, and a point approximately 65 feet north of the point where the trailer came to rest.
21. On April 6, 2008, field PID monitoring detected organic vapors at spring pools located adjacent to the lakeshore at a point approximately 510 feet northwest of the spill origin. Samples were collected and volatile petroleum hydrocarbons were detected at the Arnold Spring. Benzene levels were detected at elevated levels of 3,650 parts per billion (ppb). The discharge limitations for benzene are 2.2 ppb as defined by the Tribes' water quality standards and 5 ppb as defined by the Federal discharge limitations.
22. On April 7, 2008, the water treatment system was plumbed and powered by a temporary generator, and intermittent treatment of the spring water began. Laboratory samples were collected of both the influent and effluent water stream.

23. On April 8, 2008, semi-permanent wiring and float level controls were added to the treatment system, and continuous operation began. The combined spring flow was approximately 100,000 gallons per day.
24. On April 9, 2008, petroleum vapors had migrated into the Kohler home located between the accident site and the lake, apparently by direct subsurface migration. On several occasions, the vapors built up to potentially explosive levels. The occupants were evacuated to a hotel.
25. On April 10, 2008, eight monitoring wells were installed, one additional well was being drilled and one additional well was planned. For preliminary monitoring well information and evidence of dissolved hydrocarbons in the groundwater, see, Table 4 in Respondent's April 23, 2008 Project Status Update Report.
26. On April 15, 2008, the MDEQ requested that EPA take the regulatory lead for the Facility.
27. On April 16, 2008, the Tribes requested EPA to assume jurisdiction for the Facility that occurred within the exterior boundaries of the Flathead Indian Reservation.
28. On April 18, 2008, Al Lange, an On Scene Coordinator (OSC) for EPA, visited the site, confirmed that the spill had impacted soil, air, and water, and noted that the geology of the spill area comprised several dolomite ridges and numerous springs that drain into the Flathead Lake.
29. On April 19, 2008, petroleum vapors had migrated into four (4) additional homes, apparently by direct subsurface migration. The vapors built up to potentially explosive levels.
30. As a result of the April 19, 2008 findings, the residents of the Jones household vacated their home, and Debra Sykes chose to ventilate her home and remain. Table 6 in Respondent's April 23, 2008 Project Status Update Report displays the elevated organic vapors in the air.
31. On April 20, 2008, Cedar Creek Engineering, Respondent's representative, contacted the Lake County Office of Emergency Management (OEM) and recommended that residents in the Kohler, Arnold, Sykes/Gates, Jones, and Knudson households, be asked to vacate their homes, due to uncertain and variable conditions that threatened or potentially threatened the health and safety of the residents. The residents evacuated the homes.

C. Current Discharge and Threat of Discharge

32. The following five (5) homes are being ventilated using abatement systems to mitigate the health and explosion hazards: Kohler, Arnold, Sykes/Gates, Jones, and Knudson.
33. On May 1, 2008, the existing water treatment system was being upgraded. The upgraded system includes an aeration tank to reduce hydrocarbon concentrations entering the

carbon, thereby extending carbon life and employs two larger carbon filters. The spring catchments will be sealed so that they will continue to operate when submerged, and the existing deck, now located below the high water line, will be removed.

34. On May 12th and May 13th, 2008, heavy rainfall was reported, and an approximately fifty-foot area west of the Jones' property started to flow water and product. A pool of free product about 18 inches in diameter and 1.5 inches deep was observed. A trench was excavated; product seepage was plugged or did not immediately reappear; all gasoline on the surface was being contained with absorbent pads; and the contaminated dirt was stockpiled and hauled away.
35. On May 15, 2008, surface water sampling results of the Spring Composite taken on May 6, 2008, for benzene and toluene showed 1250 ppb and 3020 ppb. The system effluent sampled on May 7, 2008, revealed that extremely high levels of benzene and toluene remained in the effluent (643 ppb and 373 ppb, respectively) subsequent to treatment.
36. The May 15, 2008 sample results also showed that benzene and toluene were now showing up at sampling location N143, where previously benzene and toluene had not been evidenced above .50 ppb, suggesting that a new well may be needed between the Arnold property and the N143 location.
37. Additionally, the May 15, 2008 sample results showed benzene at 9,150 ppb and toluene at 20,000 ppb at monitoring well 8.

D. Actual and Potential Harm

38. Gasoline and its constituents are extremely flammable. The gasoline vapors detected in the nearby homes may pose an imminent threat of fire and/or explosion.
39. Oil, including petroleum and its constituents, poses a threat to human health. BTEX and some PAH compounds, both of which are found in petroleum products, have been linked to adverse developmental effects in laboratory animals. Inhalation exposure to benzene has been associated with impaired reproduction in women. Skin contact with benzene and ethyl benzene may cause dermatitis. Inhalation of high concentrations of benzene, xylene, and toluene in air may cause central nervous system depression. Benzene is a known carcinogen. The PAH components are associated with a variety of toxic effects, including dermatitis. Several PAH compounds are probable human carcinogens.
40. Oil discharged to surface waters poses a threat to wildlife. Many of the constituents noted above are harmful to aquatic life in very low concentrations.
41. Potential exposure pathways associated with the gasoline release at the Facility include human exposures to vapors (including potentially explosive levels) in homes, possible contamination of the community drinking water source located approximately 350 north, and discharges to Flathead Lake. An additional potential effect of releases at the Facility

is the destruction of trees and shrubs situated in the pathway of down gradient migration of the plume, via groundwater and subsurface soils.

42. If action is not taken to stop further release of gasoline from the Facility, and mitigate contaminated soil, air, and groundwater, the following hazardous effects of the release can be expected to continue and spread:
- (a) harmful and potentially explosive vapors in sewers and homes;
 - (b) discharges of oil to Flathead Lake, a recreational area; and
 - (c) destruction of trees and shrubs in homes that are situated in the pathway of down gradient migration of the plume, via groundwater.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

43. The Respondent's vehicle is an "onshore facility" as defined by CWA section 311(a)(10), 33 U.S.C. § 1321(a)(10), and by OPA section 1001(24), 33 U.S.C. § 2701(24).
44. Respondent is a "person" as defined by CWA section 311(a)(7), 33 U.S.C. § 1321(a)(7), by OPA section 1001(27), 33 U.S.C. § 2701(27), and by RCRA § 1004(15), 42 U.S.C. § 6903(15).
45. Respondent is an "owner or operator" of the vehicle, as defined by CWA section 311(a)(6), 33 U.S.C. § 1321(a)(6), and OPA section 1001(26), 33 U.S.C. § 2701(26).
46. A "removal" as defined in CWA section 311(a)(8), 33 U.S.C. § 1321(a)(8), and OPA section 1001(30), 33 U.S.C. § 2701(30), is necessary at the Facility to minimize and mitigate damage to the public health and welfare.
47. An actual or threatened "discharge" as defined in CWA section 311(a)(2), 33 U.S.C. § 1321(a)(2), OPA section 1001(7), 33 U.S.C. § 2701, and 40 C.F.R. § 110.1, is occurring or has occurred at or from the Facility.
48. Gasoline product is "oil" within the meaning of CWA section 311(a)(1), 33 U.S.C. § 1321(a)(1), and OPA section 1001(23), 33 U.S.C. § 2701(23).
49. Oil is a discarded material, and thus a "solid waste" as defined in section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and 40 C.F.R. §§ 261.2 and 261.10. Such solid waste is also a "hazardous waste" as defined in section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 261.3 and 261.10. Benzene and toluene are characteristic hazardous wastes under 40 C.F.R. § 261.20 through § 261.24.
50. The past and/or present "handling," "storage," "treatment," "transportation," and/or "disposal" of gasoline/oil and mixtures of gasoline/oil with water and /or soil may

- present an imminent and substantial endangerment to human health and/or the environment within the meaning of section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
51. Respondent has contributed and/or is contributing to the handling, storage, treatment, transportation, or disposal by discarding gasoline onto soil and water and into the air causing the potential endangerment.
 52. The actions required by this Order are necessary to protect human health and/or the environment because the gasoline/oil is flowing via ground water to Flathead Lake, the families impacted by the disposal remain unable to return to their homes due to contamination of the air, and there has been no clear ground or surface water modeling plan to identify the numerous potential exposure pathways.
 53. Oil is currently present at or around the Facility.
 54. Flathead Lake is a "navigable water" of the United States as defined in CWA section 502(7), 33 U.S.C. § 1362(7), and OPA section 1001(21), 33 U.S.C. § 2701(21).
 55. Flathead Lake and the groundwater beneath the houses are both a "natural resource" within the meaning of the NCP, 40 C.F.R. § 300.5, and OPA section 1001(20), 33 U.S.C. § 2701(20).
 56. "Natural resources", as defined in OPA section 1001(20), 33 U.S.C. § 2701(20), and the NCP, 40 C.F.R. § 300.5, have been or may be affected by the discharge or threatened discharge at or from the Facility.
 57. The discharge of oil from the Facility is an actual or threatened discharge of oil in violation of CWA section 311(b), 33 U.S.C. § 1321(b).
 58. The discharge of oil from the Facility has occurred or threatened to occur in a "harmful quantity" within the meaning of CWA section 311(b)(3), 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3, because a discharge of oil from the Facility into the navigable water has or would violate applicable water quality standards and has caused a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or caused a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
 59. There may be an imminent and substantial threat to public health or welfare because of the actual or threatened discharge of oil from the Facility in violation of CWA section 311(b), 33 U.S.C. § 1321(b).
 60. The measures set forth in this Order are necessary and appropriate to abate, minimize, stabilize, mitigate or eliminate the discharge or substantial threat of discharge of oil at or from the Facility and to protect the public health or welfare, within the meaning of CWA. Further, these measures ensure effective and immediate removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil into or on the navigable waters, on the adjoining shorelines to the navigable waters, or that may affect

natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. These measures are also necessary to protect the public health and the environment.

61. Information sought in this Order is required to carry out the purposes and objectives of the CWA.
62. Keller Transport is or will be liable to the United States Government for any costs that the United States has incurred or may incur in connection with the Facility, under OPA section 1002(b)(1), 33 U.S.C. § 2702(b)(1), and/or as otherwise provided by law.

VII. ORDER

63. Based on the above, and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect human health and/or the environment. EPA, therefore, hereby orders Respondent to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.
64. Respondent shall finance and perform the Work in accordance with this Order, including, but not limited to, plans, standards, specifications and schedules set forth in this Order or developed by Respondent and approved by EPA pursuant to this Order.

VIII. WORK TO BE PERFORMED

A. Project Coordinator.

65. Respondent shall designate its Project Coordinator and shall notify EPA in writing within three (3) days of the Effective Date of this Order of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator is:

Donna K. Inman, 8ENF-UFO
Technical Enforcement Program
1595 Wynkoop St.
Denver, CO 80202-1129

Tel: 303-312-6201
Fax: 303-312-6409

Inman.DonnaK@epa.gov

EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. EPA and Respondent have the right to change their respective Project Coordinators. The other party must be notified in writing at least three (3) days prior to the change.

66. EPA will approve/disapprove of Respondent's Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical

background and experience requirements of the EPA. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and tribal law. EPA retains the right to disapprove any of the contractors or subcontractors retained by Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor within three (3) working days following EPA's disapproval, and shall notify EPA of the new contractor's name and qualifications within four (4) working days of EPA's disapproval.

67. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this Order, all reports, correspondence, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 65, unless notice is given in writing to Respondent of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption and include the Docket Number as shown on the first page of this Order.
68. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973 and CWA § 311(e), 33 U.S.C. § 1321(e). All of the Work performed under this Order shall be under the direction and supervision of Respondent's Project Coordinator and shall be in accordance with the terms of this Order.
69. Respondent's obligation to perform the Work will begin on the Effective Date of this Order.
70. The Work undertaken pursuant to this Order is subject to EPA approval and shall be conducted in compliance with all applicable EPA guidance, policies and procedures and with this Order.
71. The Work Plan shall include a schedule of the Work to be performed. The Work Plan shall be submitted to EPA for approval. Following EPA's approval or modification of the Work Plan pursuant to Paragraph 73 of this Order, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.

B. Work Plan and Implementation.

72. Within 25 days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth below. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order.
73. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 10 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work

Plan, the schedule, and any subsequent modifications shall be deemed to be incorporated into this Order and fully enforceable under this Order. Respondent(s) shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA- approved Work Plan. Once a Work Plan is in effect, Respondent shall not commence or undertake any removal actions at the facility without prior EPA approval.

C. Statement of Work.

74. Unless otherwise stated in the Work Plan as approved or modified by EPA, Respondent shall:
- a. submit an application for an EPA NPDES Permit in accordance with the regulations found at 40 C.F.R. Part 122 and immediately ensure that the water treatment system effectively removes and/or reduces BTEX constituents in surface water to levels established in the Tribe's Surface Water Quality Standards and Antidegradation Policy dated April 11, 2006, standards found in EPA's Model NPDES Permit for Discharges Resulting From the Cleanup of Gasoline Released From Underground Storage Tanks dated June 1989, until a final NPDES permit is issued by EPA;
 - b. within five (5) days provide the following to EPA:
 - 1) propose to EPA for EPA approval, the installation of a monitoring well north of location 143 and the Kohler and Arnold properties to determine the northern most edge of the extent of the contamination; and
 - 2) submit to EPA, a map of any and all existing and proposed trenches and a water table map that includes the depth to the water table, the depth of the wells, and the diameter of the wells;
 - d. within 15 days, provide the following to EPA:
 - 1) the well logs for existing monitoring wells and any and all proposed plans for additional extraction and monitoring wells at the Facility to further define and to contain the nature and extent of contamination and initiate well installation;
 - 2) copies of any and all groundwater modeling data undertaken to date; and
 - 3) documentation of the air remediation measures currently installed and proposed for all homes impacted by the discharge, including the five (5) homes referenced in Paragraph 32, *supra*;
 - e. analyze and submit investigative data regarding groundwater, surface water, soil remediation, and air remediation;
 - f. analyze remediation alternatives under each media referenced above;

- g. select proposed alternatives under each media for EPA approval;
 - h. design and implement a plan for the proposed remediation alternative under each media;
 - i. identify cleanup levels for each media consistent with tribal and federal regulations;
 - j. monitor and investigate complaints and issues of concern from area citizens and residents impacted by the gasoline spill; and
 - k. provide an alternative potable water source should drinking water become contaminated.
75. Respondent shall not commence or undertake any future removal actions at the site without prior EPA approval.
76. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify EPA not less than three (3) working days in advance of any sample collection activity. EPA may take any additional samples that it deems necessary.

D. Health and Safety Plan.

77. Respondent shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this Order. Within 10 calendar days after the effective date of this Order, Respondent shall submit for EPA review a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910.

IX. QUALITY ASSURANCE

78. As part of the Work Plan, Respondent shall include a Quality Assurance Project Plan (QAPP), for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this Order by reference.
79. As part of the Work Plan, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this Order.

80. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require re-sampling and additional analysis.
81. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that EPA follows. Respondent shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon EPA's request, Respondent shall have its laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondent shall submit a plan to address the deficiencies and EPA may require re-sampling and additional analysis.
82. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within 15 calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within 15 calendar days.

X. EPA APPROVAL OF DELIVERABLES

83. Deliverables required by this Order shall be submitted to EPA for approval or modification pursuant to Paragraph 84. All deliverables must be received at EPA by the due date specified in this Order or by schedules developed pursuant to this Order.
84. After review of any deliverable that is required pursuant to this Order, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within ten (10) days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
85. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 84(d), Respondent shall, within 10 calendar days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval.

86. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 84(d), Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.
87. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any action as required in a deliverable which has been modified or developed by EPA.
88. If upon re-submission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately and such failure shall be deemed a violation of the Order.
89. All deliverables required to be submitted to EPA under this Order, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this Order. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XI. MODIFICATIONS

90. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of the Work Plan, Respondent shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this Order.
91. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation(s) to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. EMERGENCY RESPONSE

92. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health or the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondent shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondent shall thereafter submit to EPA for approval, within 10 days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme

emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

93. Notification provided under this Order is not in lieu of notification required under other applicable requirements, including, if applicable, those in CWA section 311, 33 U.S.C. § 1321, CERCLA section 103, 42 U.S.C. § 9603, and section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

XIII. REPORTING REQUIREMENTS

94. Respondent shall submit certified monthly written progress reports to EPA concerning actions undertaken pursuant to this Order, beginning 14 calendar days after the effective date of this Order and continuing until the termination of this Order, unless otherwise directed in writing by the Project Coordinator. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered.
95. Within 60 calendar days after completion of the removal actions required under this Order, Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in section 300.165 of the NCP, 40 C.F.R. § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, 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 destinations 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:
96. The certification required by Paragraph 94 above, shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, 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.

Signature: _____

Name: _____

Title: _____

Date: _____

XIV. SAMPLING, ACCESS AND DATA AVAILABILITY

97. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this Order shall be validated by Respondent and submitted to EPA within 20 days of Respondent's receipt of the data. Respondent shall tabulate data chronologically by media. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any tribal or federal law or regulation.
98. Respondent shall orally notify EPA at least three (3) days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.
- A. Site Access.**
99. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a) and CWA § 308, 33 U.S.C. § 1318. Respondent shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials. Respondent shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this Order. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this Order, as described in Paragraph 101. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site and appropriate off-site areas to conduct actions that EPA determines to be necessary. EPA, its contractors and oversight officials shall notify Respondent of their presence on the Site by presenting their credentials. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans and regulations.
100. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made for the purposes of enforcing the requirements of RCRA and/or the CWA or this Order shall be construed as a violation of the terms of this Order.
- B. Access Agreements.**
101. Where action under this Order is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 45 days of approval of any Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EPA's

Project Coordinator with copies of any access agreements. Respondent shall immediately notify EPA if after using Respondent's best efforts it is unable to obtain such agreements within the time required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner of such property requesting access agreements to permit Respondent, EPA, and EPA's authorized representatives to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondent shall, within 10 days of its receipt of a denial of access, submit in writing, a description of its efforts to obtain access. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

C. Confidential Business Information.

102. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. § 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, monitoring or the Work performed pursuant to this Order.

D. Privileged Documents.

103. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent 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 author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.
104. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Site shall be made available to EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
105. 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.

106. Nothing in this Order shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA, and the CWA,.

XV. OFF-SITE SHIPMENTS

107. Respondent shall, prior to any off-facility shipment of oil, oil-contaminated soil, or oil-contaminated water, provide written notification of such shipment to the appropriate Tribal and MDEQ officials and to the EPA Project Coordinator. The notification shall include (1) the name and location of the facility to which the material will be shipped, (2) the type and quantity of the material to be shipped, (3) the expected schedule for the shipment of the material, and (4) the method of transportation of the shipment of the material. Respondent shall also notify the EPA Project Coordinator and the appropriate MDEQ officials of major changes in the shipment plan, such as a decision to ship the material to another facility. All off-site shipments of oil, oil-contaminated soil and oil-contaminated water shall be transported, stored, and disposed of in accordance with all applicable U.S. Department of Transportation regulations, with the NCP and with all other applicable tribal, federal, and local laws and regulations.

XVI. ADDITIONAL WORK

108. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in Section I (Introduction). EPA may determine that Respondent shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five (5) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within 10 days of Respondent's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a Work Plan for any additional work, Respondent shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this Order.

XVII. ADMINISTRATIVE DOCUMENTATION

109. EPA retains the responsibility for the issuance of any decision documents related to the Site.
110. EPA will provide Respondent with copies of all decision documents for the Site.
111. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of performing the Work upon which selection of the response action may be

based. EPA will maintain an administrative record file. The administrative record supporting this Order and the Work to be performed shall be available for public review at the EPA Montana Office located at 10 West 15th St., Suite 3200, Helena, MT 59626.

XVIII. RECORD RETENTION

112. Respondent shall preserve all documents and information, including raw data, relating to the Work performed under this Order, or relating to any solid waste or hazardous waste found at the Site, for 10 years following completion of the Work required by this Order.
113. Respondent shall acquire and retain copies of all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors or attorneys.
114. Respondent shall make available to EPA all employees and persons, including contractors, who engage in activities under this Order and ensure their cooperation with EPA with respect to this Order.
115. After the 10-year retention period and 90 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this Order. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the 10-year retention period at the written request of EPA.
116. All documents pertaining to this Order shall be stored by Respondent in a centralized location at the Site, or an alternative location mutually approved by Respondent and EPA, to promote easy access by EPA or its representatives.

XIX. REIMBURSEMENT OF OVERSIGHT COSTS

117. EPA reserves the right to bring an action against Respondent under any applicable law for recovery of all response costs, including oversight costs, and past costs incurred by EPA with respect to the Site that have not been reimbursed by Respondent; any costs incurred in the event that EPA performs the SOW or any part thereof; and any costs incurred by EPA in connection with any other response activities conducted at this Site. Oversight costs shall mean costs that EPA incurs in monitoring and supervising Respondent's performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Order, as well as costs incurred in overseeing implementation of the Work.

XX. REPORTS AND NOTIFICATIONS

118. Unless otherwise specified, all reports and notifications required by this Order to be given to EPA shall be submitted to the Project Coordinator.

XXI. RESERVATION OF RIGHTS

119. Notwithstanding any other provisions of this Order, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health 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 or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, OPA, and/or the CWA, and any other applicable statutes or regulations.
120. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under RCRA, CWA, or OPA.
121. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CWA, and/or OPA, or any other statutory, regulatory, or common law authority of the United States.
122. This Order is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA and/or the CWA or any other applicable local, tribal, or federal laws and regulations.
123. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Assistant Regional Administrator, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

XXII. OTHER CLAIMS

124. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent(s). The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.
125. Nothing in this Order shall constitute a satisfaction of or discharge from any claim or cause of action against the Respondent or any person, for any liability such person may have under RCRA, CWA, and/or other statutes, or the common law, including but not limited to any claims of the United States for penalties, costs, damages, and interest.

XXIII. COMPLIANCE WITH OTHER LAWS

126. All containment, remediation, mitigation, and removal actions performed by Respondent shall be consistent with RCRA, OPA, CWA, and the NCP.
127. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable tribal, federal, and local laws and regulations.

XXIV. VIOLATION OF THIS ORDER

128. Violation of any provision of this Order may subject Keller Transport to civil penalties of (1) up to \$32,500 per day of violation, or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund, as provided in CWA section 311(b)(7)(B), 33 U.S.C. § 1321(b)(7)(B), and/or (2) up to \$6,500 for each day of violation, as provided by RCRA section 7003(b), 42 U.S.C. § 6973(b).
129. If Respondent violates this Order, EPA may carry out the required actions unilaterally, pursuant to any applicable authority, including CWA section 311(c), 33 U.S.C. § 1321(c). In that event, Respondent may be liable to the United States Government for any costs that the United States incurs, under any applicable authority, including OPA section 1002(b)(1), 33 U.S.C. § 2702(b)(1). EPA also may seek judicial enforcement of this Order pursuant to CWA section 311(e), 33 U.S.C. § 1321(e) and/or RCRA section 7003(b), 42 U.S.C. § 6973(b).

XXV. NOTICE OF COMPLETION

130. When EPA determines, after EPA's review of the Final Report, that all Work have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including but not limited to payment of costs, EPA will provide written notice to the Respondent(s). If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent(s) in writing, provide a list of the deficiencies, and require that Respondent(s) modify the Work Plan to correct such deficiencies. The Respondent(s) shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent(s) to implement the approved modified Work Plan shall be a violation of this Order.

XXVI. SEVERABILITY

131. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

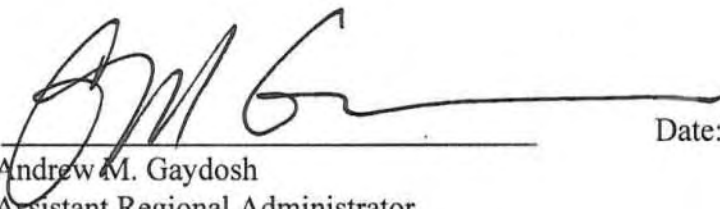
XXVII. OPPORTUNITY TO PRESENT INFORMATION

132. Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against Respondent), in writing to EPA within seven (7) business days of issuance of the Order. Submission of information, arguments or comments is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, does not give Keller Transport a right to seek review of this Order, and does not delay or suspend the effect of this Order.

XXVIII. EFFECTIVE DATE

133. This Order shall be effective upon signature by the Assistant Regional Administrator, Office of Enforcement, Compliance and Environment Justice (ECEJ) Region 8.

IT IS SO ORDERED



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement Compliance and
Environmental Justice

Date: 5/22/08