

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

_____	)	U.S. EPA Region 1
In the Matter of:	)	Docket No. CERCLA-01-2012-0012
	)	
Bay Street Mercury Superfund Site	)	
A Connell Street	)	Proceeding Under Sections 104, 106(a), 107
Tiverton, Rhode Island	)	and 122 of the Comprehensive
	)	Environmental Response, Compensation,
TOWN OF TIVERTON, Respondent.	)	and Liability Act, as amended, 42 U.S.C.
	)	§§ 9604, 9606(a), 9607 and 9622
	)	
	)	
	)	

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 the Town of Tiverton, Rhode Island ("Tiverton"). The Settlement Agreement provides for reimbursement of certain response costs incurred by the United States at or in connection with portions of the Bay Street Mercury Superfund Site ("Site") located at A Connell Street in Tiverton, Rhode Island and for performance of a removal action by Tiverton, the "Respondent" herein, on the unpaved Right of Way Areas within the Site.

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 Rhode Island of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

## **II. PARTIES BOUND**

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

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

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

### **III. DEFINITIONS**

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. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed, on September 13, 2011, by the Director of the Office of Site Remediation and Restoration, EPA Region 1. The Action Memorandum is incorporated herein by reference and attached as Appendix A.

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

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

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

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

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 31 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 41 (emergency response), and Paragraph 67 (work takeover). Future Response Costs shall also include all Interim Response Costs and all Interest on those Past Response Costs Respondent has agreed to reimburse under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from

November 23, 2011 to the Effective Date. Future Response Costs shall not include those costs associated with removal activities carried out for any private properties within the Site when such costs are unrelated to removal activities conducted in, on, or otherwise affecting the Right of Ways.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between November 23, 2011 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.

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

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

m. "Parties" shall mean EPA and Respondent.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site, through November 23, 2011, plus Interest on all such costs through such date.

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

p. "Right of Ways," "ROWs," or "Right of Way Areas" shall mean the Town-owned or operated portions of the Site located along both sides of A Connell Street in Tiverton, generally consisting of those areas, including sidewalks, along each side of A Connell Street between the paved roadway and any abutting residential properties. The Right of Ways at the Site consist of those areas on each side of A Connell Street (including any sidewalks) that extend out to 20 feet from the midpoint of the paved roadway and are not underneath the paved surface of the roadway. The roadway midpoint shall be determined using the best available data (e.g., surveys) but, in the absence of this technical information, and as appropriate with EPA approval,

the midpoint may be determined using the center line of the paved roadway surface, or by some other means approved by EPA.

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

r. "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.

s. "Site" shall mean the Bay Street Mercury Superfund Site in Tiverton, Rhode Island, encompassing approximately 3 acres at and around A Connell Street in Tiverton, and consisting of the ROWs as well as private properties including, but not necessarily limited to, the private properties at 0 A Connell Street (consisting of approximately 0.4 acres and further identified as parcel 17-3 in the Town's land database), 37 A Connell Street (consisting of approximately 0.75 acres and further identified as parcel 16-4 in the Town's land database), and 91 A Connell Street (consisting of approximately 0.5 acres and further identified as parcel 17-4 in the Town's land database). The Site is depicted generally on the map attached as Appendix B.

t. "State" shall mean the State of Rhode Island and Providence Plantations.

u. "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.

v. "Town" shall mean the Town of Tiverton, Rhode Island.

w. "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 Chapter 21E of the Massachusetts General Laws, M.G.L. c. 21E, and the Massachusetts Contingency Plan at 310 CMR 40.0006.

x. "Work" shall mean all activities in, on, or otherwise affecting surface soils from the Right of Way Areas at the Site that Respondent is required to perform under this Settlement Agreement. "Work" does not include removal activities carried out with respect to any soils at depths greater than two (2) feet below surface level or removal activities carried out with respect to any of the above-referenced private properties within the Site.

#### **IV. FINDINGS OF FACT**

9. The Site is located on A Connell Street in Tiverton and includes both the ROWs along both sides of that roadway as well as portions of at least three (3) adjoining residential properties. The Site is in a residential neighborhood bordered by Bay Street to the west, Bottom Street to the east, and residential properties to the north and south. The geographic coordinates at or near the approximate center of the Site are 41°40'25.45"N latitude and 71°11'32"W longitude.

10. The residential properties currently believed to be within the Site, in whole or in part, include but are not necessarily limited to 0 A Connell Street, 37 A Connell Street, and 91 A Connell Street.

11. The Site is located within the boundaries of a larger area, known as the Bay Street Study Area Site ("BSSA Site"), consisting of approximately 100 Tiverton properties. The BSSA Site is more specifically defined under a 2009 settlement agreement ("2009 Settlement") between the Rhode Island Department of Environmental Management ("RI DEM"), the Town, Southern Union Company and its New England Gas Company division, as well as numerous area property owners identified therein. The 2009 Settlement involves a separate, ongoing cleanup under the direction of RI DEM to address, primarily, soils contaminated with manufactured gas plant ("MGP") waste. The MGP cleanup at the BSSA Site is separate from the Work specified under this Settlement Agreement to address mercury-contaminated wastes from historical hat manufacturing activities in or near Tiverton.

12. In May 2011, On-Scene Coordinator ("OSC") Tom Condon of the EPA Emergency Planning and Response Branch ("EPRB") received a letter from RI DEM conveying a written request from the Town to RI DEM seeking RI DEM's assistance in obtaining help from EPA to clean up mercury-contaminated wastes at the Site. Such wastes, encountered during the course of the Town's work to address MGP waste at the BSSA Site, appeared to be mostly mercury and mercury-contaminated felt material generated by a local hat manufacturer and disposed of at the Site approximately 100 years ago.

13. In June 2011, EPA conducted a Removal Preliminary Assessment and Site Investigation ("PA/SI") at the Site. The PA/SI consisted of collecting and analyzing samples of surface soils. Results of laboratory analysis from samples collected during the PA/SI supported the determination that a removal action is appropriate at the Site.

14. In the September 13, 2011 Action Memorandum, EPA made an endangerment determination and identified the removal of surface soils contaminated with mercury as the goal of the proposed removal action at the Site. *See Appendix A.* By signing the Action

Memorandum, the Director of EPA's Office of Site Remediation and Restoration authorized a fund-lead removal action at the Site and established a project ceiling of \$840,000 for the purpose of excavating mercury-contaminated soils there.

15. EPA issued a letter entitled Notice of Potential Liability and Invitation to Perform or Finance Proposed Cleanup Activities for the Site, dated October 24, 2001 (the "Notice Letter"), to the Town of Tiverton as the owner or operator of the Right of Ways at the Site. The status of the Town as a "potentially responsible party" described by EPA in the Notice Letter was based solely on Respondent's connection to the Right of Ways at the Site and not to any of the private properties within the Site.

#### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

- a. The 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 Action Memorandum and herein, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of the response actions and payment of the response costs incurred and to be incurred as such actions or costs relate to the ROWs at the Site. The basis for Respondent's liability is as follows:
  - i. Respondent Town is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- e. The conditions described in the Action Memorandum and in the Findings of Fact, above, constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).



f. The removal action required by this Settlement Agreement and related to the Right of Way Areas 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, 40 C.F.R. § 300.700(c)(3)(ii).

## **VI. SETTLEMENT AGREEMENT AND ORDER**

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

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

18. 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 seven (7) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least seven (7) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within seven (7) days following EPA's disapproval. Any proposed contractor must demonstrate compliance with "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," ANSI/ASQC E-4-1994 (American National Standard, January 5, 1995), by submitting a copy of the contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

19. Within seven (7) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or

communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

20. EPA has designated Tom Condon of the EPRB, EPA Region 1, as its On-Scene Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at:

Tom Condon, OSC  
U. S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OSRR 02-2)  
Boston, Massachusetts 02109-3912  
Attention - Bay Street Mercury Removal Site (Tiverton, RI)  
Phone: (617) 918-1206  
Fax: (617) 918-0206  
[condon.tom@epa.gov](mailto:condon.tom@epa.gov)

21. EPA and Respondent shall have the right, subject to Paragraph 19, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

### **VIII. WORK TO BE PERFORMED**

22. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum and the Statement of Work, as provided in Appendices A and C, and further described in this Section. The actions to be implemented generally include, but are not limited to, the actions in Paragraphs 23 – 29 below and the SOW, consistent with the Action Memorandum.

#### **23. Work Plan and Implementation.**

a. Within fourteen (14) days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in the Action Memorandum and SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within seven (7) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule,

and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 23(b).

24. Health and Safety Plan. Within fourteen (14) days after the Effective Date, 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. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

25. Quality Assurance and Sampling.

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

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

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than three (3) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

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

27. Reporting.

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

b. Respondent shall submit one (1) hard copy and one (1) electronic copy of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan.

c. At least thirty (30) days prior to the conveyance of any interest in real property at the Site, including any ROWs, Respondent shall give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

28. Final Report. Within thirty (30) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled

"OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

29. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 29(a) and 29(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 generated from the Work to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA

Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

### **IX. SITE ACCESS**

30. For the Right of Way Areas at the Site, or for any other areas where access is needed to implement this Settlement Agreement that are also owned or controlled by Respondent, then Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the ROWs at the Site, or such other areas Respondent owns or controls, for the purpose of conducting any activity related to this Settlement Agreement.

31. Where any action under this Settlement Agreement is to be performed in, or otherwise involve, areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within fourteen (14) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

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

### **X. ACCESS TO INFORMATION**

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

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

35. 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 name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

36. 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**

37. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

38. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that

certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, 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 name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

39. 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 State 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**

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

## **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

41. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at (617) 918-1206 or, in the event of his/her unavailability, the Regional Duty Officer of the Emergency Planning and Response Branch, EPA Region 1, telephone (617) 723-8928, of the



incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph for any Right of Way Areas at the Site, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

42. In addition, in the event of any release of a hazardous substance from the Right of Ways at the Site, Respondent shall immediately notify the OSC at (617) 918-1206 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

#### **XIV. AUTHORITY OF ON-SCENE COORDINATOR**

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

#### **XV. PAYMENT OF RESPONSE COSTS**

##### **44. Payment for Past Response Costs.**

a. Within 30 days after the Effective Date, Respondent shall pay to EPA \$3,768 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, to be provided to Respondent by EPA, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number (01HP), and the EPA docket number for this action (CERCLA-01-2012-0012).

b. At the time of payment, Respondent shall send notice that such payment has been made by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

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

c. The total amount to be paid by Respondent pursuant to Paragraph 44(a) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

45. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 47 of this Settlement Agreement.

b. 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 01HP. Respondent shall send the check(s) to:

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

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

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

and

Margaret Morris, Enforcement Coordinator  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100 (OSRR 02-2)  
Boston, MA 02109-3912  
[Morris.margaret@epa.gov](mailto:Morris.margaret@epa.gov)

46. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest

on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

47. Respondent may contest payment of any Future Response Costs billed under Paragraph 45 if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 45. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Rhode Island and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. 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, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued Interest) to EPA in the manner described in Paragraph 45. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 45. 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 Respondent's obligation to reimburse EPA for its Future Response Costs.

#### **XVI. DISPUTE RESOLUTION**

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

49. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within five (5) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have fourteen (14) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

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

#### **XVII. FORCE MAJEURE**

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

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

### **XVIII. STIPULATED PENALTIES**

54. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 55 and 56 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

#### **55. Stipulated Penalty Amounts – Work.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 55(b):

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

b. Compliance Milestones: designating a Contractor or Project Monitor under Paragraphs 18 and 19 of Section VII; ensuring proper sampling and analysis under Paragraph 25 of Section VIII; providing site access under Section IX; paying Costs under Paragraph 44 and 45 of Section XV; paying for claims or costs under Paragraph 76 of Section XXIV; securing insurance under Paragraph 79 of Section XXV; establishing sufficient financial security under Paragraphs 80 through 84 of Section XXVI; implementing additional work under Paragraph 88 of Section XXVIII; implementing additional work under Paragraph 89 of Section XXIX (Deficient Work); or implementing the work specified in the SOW.

56. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 23, 24, 26, 27, 28, and 29 of Section VIII (Work Plan, Health and Safety Plan, Proposal for Post-Removal Site Control, Progress Reports, Final Report, Notification of Off-Site Shipment); Paragraph 33 of Section X (Access to Information); Paragraph 38 of Section XI (Record Retention); Paragraphs 41 and 44 of Section XIII (Notification of Release); Paragraph 86 of Section XXVII (Modifications); Paragraph 88 of Section XXVIII (Work Plan for Additional Removal Action); Paragraph 89 of Section XXIX (Modified Work Plan); or the SOW:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 <sup>st</sup> through 14 <sup>th</sup> day
\$500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1,000	31 <sup>st</sup> day and beyond

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 67 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$50,000.

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 50 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.

59. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the

failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

60. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the U. S. Environmental Protection Agency address for Superfund Payments specified in Paragraph 45.b., above [U.S. EPA, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000], shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 01HP, the EPA Docket Number CERCLA-01-2012-0012, 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 45.c., above [EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268].

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

62. 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.

63. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 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 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 67. 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**

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

### **XX. RESERVATIONS OF RIGHTS BY EPA**

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or 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 Right of Way Areas at 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.

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

#### **XXI. COVENANT NOT TO SUE BY RESPONDENT**

68. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement 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 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, Past Response Costs, or Future Response Costs.

69. Nothing in this Settlement 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).

70. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to 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.

71. The waiver in Paragraph 70 shall not apply with respect to any defense, claim, or cause of action that a 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 such 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**

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

73. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such

person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

### **XXIII. CONTRIBUTION**

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

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

### **XXIV. INDEMNIFICATION**

76. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its

control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

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

#### **XXV. INSURANCE**

79. At least seven (7) days prior to commencing any on-site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one (1) million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XXVI. FINANCIAL ASSURANCE**

80. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$220,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- Work;
- 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;
  - 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;
  - e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. § 264.143(f); and/or
  - f. a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

81. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 80, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

82. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Paragraph 80(e) or 80(f) of this Settlement Agreement, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the financial assurance amount of \$220,000 for the Work relating to the Right of Way Areas at the Site plus any other RCRA,

CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

83. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 80 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

## **XXVII. MODIFICATIONS**

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

86. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 85.

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

**XXVIII. ADDITIONAL REMOVAL ACTION**

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

**XXIX. NOTICE OF COMPLETION OF WORK**

89. 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 access to information under Section X and record retention under Section XI, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

**XXX. INTEGRATION/APPENDICES**

90. 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 (Action Memorandum); Appendix B (Site Map); and Appendix C (Statement of Work).

**XXXI. EFFECTIVE DATE**

91. This Settlement Agreement shall be effective three (3) days after the Settlement Agreement is signed by the Director of the Office of Site Remediation and Restoration.

The undersigned representatives of Respondent certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind Respondent to this document.

Agreed this 9 day of April, 2012.

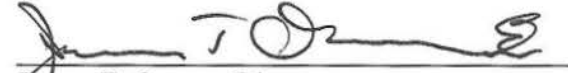
For Respondent, Town of Tiverton, Rhode Island:

By J. Alonzo

Title Town Admin.



It is so ORDERED and Agreed this 18<sup>th</sup> day of April, 2012.

By:   
James T. Owens, Director  
Office of Site Remediation and Restoration  
U.S. Environmental Protection Agency, Region 1

Date: 4/18/12

EFFECTIVE DATE: *[Insert date 3 days after date of EPA signature.]*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

**CONTAINS ENFORCEMENT-SENSITIVE INFORMATION**

**MEMORANDUM**

**DATE:** September 13, 2011

**SUBJ:** Request for a Removal Action at the Bay Street Mercury Site,  
Tiverton, RI - **Action Memorandum**

**FROM:** Thomas Condon, On-Scene Coordinator  
Emergency Response and Removal Section II

**THRU:** Steven R. Novick, Chief  
Emergency Response and Removal Section II

Arthur V. Johnson III, Chief  
Emergency Planning & Response Branch

**TO:** James T. Owens III, Director  
Office of Site Remediation and Restoration

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval of the proposed removal action at the Bay Street Mercury Site (the Site), which is located along A Connell Street in Tiverton, Newport County, Rhode Island. Hazardous substances present in surface soils at the Site, if not addressed by implementing the response actions selected in this Action Memorandum, will continue to pose a threat to human health and the environment. There are no nationally significant or precedent-setting issues associated with this Site, and there has been no use of the OSC's \$200,000 warrant authority.

**II. SITE CONDITIONS AND BACKGROUND**

**CERCLIS ID# :** RIN000106074  
**SITE ID# :** 01HP  
**CATEGORY :** Time-Critical

## A. Site Description

### 1. Removal site evaluation

At the request of the Rhode Island Department of Environmental Management (DEM) EPA initiated a removal site investigation on June 21, 2011 which included collection of surface soil samples, and a review of pre-existing soil sampling data from the Site. This site investigation confirmed the presence of high levels of mercury in surface soils. The findings of the site investigation were documented in a closure memorandum dated September 8, 2011 with the recommendation that a time critical removal action be conducted.

### 2. Physical location

The Site is located along both sides of A Connell Street, in Tiverton, Rhode Island, and includes the right of way areas along both sides of the road, as well as portions of adjoining residential properties. The site is located in a residential neighborhood, and is bordered by Bay Street to the west, Bottom Street to the east and residential properties to the north and south. The geographic coordinates at the approximate center of the Site are 41°40'25'45" latitude and 71°11'32" longitude.

### 3. Site characteristics

The Site consists of the Town owned right of way along both sides of A Connell Street, and portions of adjacent residential properties. The Site is located within the *Bay Street Study Area Site*, which is an on-going project involving the removal of soil contaminated with manufactured gas plant waste. The *Bay Street Study Area Site* consists of approximately 100 properties, and cleanup is currently in progress under the direction of DEM. In the course of the cleanup, remnants of felt, contaminated with mercury were encountered in surface soils in a portion of the *Bay Street Study Area Site* along A Connell Street. According to DEM files, the Site was used for the disposal of waste from a local hat factory approximately 100 years ago.

In 2004, when mercury contaminated felt was discovered on a residential property within the *Bay Street Study Area Site* EPA conducted a removal action and disposed of the contaminated surface soils. With respect to the recently discovered contaminated felt, DEM requested that EPA evaluate the area and consider taking a similar removal action. Sampling performed by EPA confirmed the presence of mercury contamination in surface soils in areas along the A Connell Street right of way and adjacent residential properties. This area, the Bay Street Area Mercury site, has been identified as a separate action, as the nature and origin of the contamination (i.e. mercury) appears to be not consistent with that of the *Bay Street Study Area Site*.

According to the 2000 Census, 8051 people live within 1 mile of the Site. According to the EPA Environmental Justice Tool, the Site is not located in an environmental justice area. The Site is located in a residential neighborhood and is readily accessible to the public.

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

While collecting samples during the removal site investigation, EPA encountered remnants of felt from the hat manufacturing process. Laboratory analysis has identified concentrations of mercury up to 170 mg/Kg in soil samples, and up to 8,400 mg/Kg in felt remnants. The State standard for mercury in residential soil is 23 mg/Kg.<sup>1</sup>

**5. NPL status**

The site is not currently on the National Priorities List, and has not received a Hazardous Ranking System rating.

**B. Other Actions to Date**

**1. Previous actions**

In October 2002, waste from a local manufactured gas plant was identified in surface soils in the residential area around Bay Street in Tiverton, Rhode Island. In 2003, DEM identified the source of the contamination to be the former Fall River Gas Company. DEM issued a Letter of Responsibility to the Southern Union Company (the owner of the former Fall River Gas Company). Between 2003 and 2005, consultants for the Southern Union Company conducted Phase I and Phase II investigations of the *Bay Street Study Area Site* to identify the nature and extent of soils contaminated with manufactured gas plant waste.

In June 2005, an association of residents, whose properties were potentially affected by the manufactured gas plant waste, filed a Civil Action against Southern Union Company. In May 2009, a Civil Action Settlement Agreement was filed in court. In accordance with the terms of the Settlement Agreement, the Southern Union Company has provided funding for the cleanup of the manufactured gas plant waste. In September 2009, cleanup activities were initiated.

In addition, in 2004 while investigations were being conducted on the *Bay Street Study Area Site*, felt remnants from the hat manufacturing process were discovered on a residential property located at 11 A Connell Street. At the request of DEM, EPA conducted a removal action to remove contaminated surface soil at that address.

**2. Current actions**

The Site is located within the *Bay Street Study Area Site*. A response action to address surface soil that is contaminated with manufactured gas plant waste is in progress, under the direction of DEM.

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<sup>1</sup> Rhode Island Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases, Section 8.02, Soil Objectives Table 1, Direct Exposure Criteria, amended February 2004.

### C. State and Local Authorities' Roles

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

DEM has committed their resources to the oversight of the ongoing action for the *Bay Street Study Area Site*, and does not have the additional resources necessary to address the mercury contaminated soils. EPA has met with DEM to discuss the proposed removal action. DEM has indicated agreement with the actions proposed in this memorandum.

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

EPA and DEM will continue to coordinate throughout the proposed removal action, and DEM will continue to be the lead agency for the entire *Bay Street Study Area Site* upon completion of EPA's removal action.

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

*Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; [§300.415(b)(2)(i)];*

The contaminated soil is located at the surface in a residential area. The Site poses a direct contact threat to local residents and others who may visit the site.

The nervous system is very sensitive to all forms of mercury, particularly methyl mercury and metallic mercury vapors. Exposure to high levels of mercury can permanently damage the brain, kidneys, and developing fetus. Effects on brain function may result in irritability, shyness, tremors, changes in vision or hearing, and memory problems. Very young children are more sensitive than adults. Mercury in the mother's body passes to the fetus and may accumulate there. It can also pass to a nursing infant through breast milk. Children poisoned by mercury may develop problems of their nervous and digestive systems, and kidney damage.<sup>2</sup>

*High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; [§300.415(b)(2)(iv)];*

Mercury is present in surface soils at levels as high as 170 mg/Kg. The applicable State cleanup standard for mercury in surface soils in a residential area is 23 mg/Kg. Portions of the site do not have vegetative cover, and contaminated surface soil and felt remnants could potentially migrate as a result of erosion caused by precipitation and wind.

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<sup>2</sup> Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services, Public Health Service, Toxicological Profile for Mercury, 1999.

*The availability of other appropriate Federal or State response mechanisms to respond to the release [§300.415(b)(2)(vii)];*

State and local governments do not have the resources to address the situation. DEM has requested that EPA conduct the proposed actions.

#### IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.<sup>3</sup>

#### V. PROPOSED ACTIONS AND ESTIMATED COSTS

##### A. Proposed Actions

##### 1. Proposed action description

It is anticipated that the removal will proceed as a fund-lead action. The removal action will protect public health, welfare, and the environment from the threats identified in Section III by removing the hazardous substances from the Site. Specific removal activities will include the following:

- conduct a site walk with the cleanup contractor;
- provide Site security and install security fencing as needed;
- conduct additional sampling as needed to define the extent of contamination in surface soils;
- clear vegetation as needed;
- excavate contaminated surface soils;
- cap in-place contaminated soils (if any) which may remain at depth or which cannot otherwise be safely excavated;
- backfill and grade excavated areas;
- dispose of hazardous substances at EPA-approved off-site disposal facilities.
- Repair response-related damages.

##### 2. Community relations

EPA will work closely with state and local authorities to ensure that information is provided to local residents and other concerned parties, in a coordinated fashion which addresses both this removal action and the actions to address the manufactured gas plant waste.

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<sup>3</sup> In accordance with OSWER Directive 9360.0-34, an endangerment determination is made based on relevant action level or clean-up standards promulgated by the federal government or the applicable state.

### **3. Contribution to remedial performance**

The cleanup proposed in this Action Memorandum is designed to mitigate the threats to human health and the environment posed by the Site. The actions taken at the Site would be consistent with and will not impede any future responses.

### **4. Description of alternative technologies**

The use of alternative technologies with regard to off-site disposal options will be examined as the site work progresses. On-site field screening and analytical techniques may be utilized for on-site field characterization purposes.

### **5. Applicable or relevant and appropriate requirements (ARARs)**

#### **Federal ARARs:**

#### 40 CFR Part 262 Standards Applicable to Generators of Hazardous Waste:

##### Subpart B - The Manifest

- 262.20 : General requirements for manifesting
- 262.21 : Acquisition of manifests
- 262.22 : Number of copies of manifests
- 262.23 : Use of the manifest

##### Subpart C - Pre-Transport Requirements

- 262.30 : Packaging
- 262.31 : Labeling
- 262.32 : Marking

##### Subpart D - Recordkeeping and Reporting

- 262.40 : Recordkeeping

#### 40 CFR Part 264 Standards for Owners and Operators of Hazardous waste Treatment, Storage, and Disposal Facilities:

##### Subpart I - Use and Management of Containers

- 264.171 : Condition of containers
- 264.172 : Compatibility of waste with containers
- 264.173 : Management of containers
- 264.174 : Inspections
- 264.175 : Containment
- 264.176 : Special requirements for ignitable or reactive waste
- 264.177 : Special requirements for incompatible wastes

#### 40 CFR Part 264 Hazardous Waste Regulations - RCRA Subtitle C:

- 268-270 : Hazardous and Solid Waste Amendments Land Disposal Restrictions Rule

#### 40 CFR Part 300.440 Procedures for Planning and Implementing Off-Site Response Actions (Off-Site Rule)

#### **State ARARs:**

The OSC will coordinate with State officials to identify additional State ARARs, if any. In accordance with the National Contingency Plan and EPA Guidance Documents, the OSC will determine the applicability and practicability of complying with each ARAR which is identified in a timely manner.

## 6. Project schedule

Removal activities will be coordinated with cleanup activities for the entire *Bay Street Study Area* Site, and the timing of this removal action may be affected by actions being conducted on the overall site. Based upon current information, removal activities are expected to begin within four to six weeks. The removal action is anticipated to be completed within twelve months.

### B. Estimated Costs

COST CATEGORY		CEILING
<i>REGIONAL REMOVAL ALLOWANCE COSTS:</i>		
ERRS Contractor		\$600,000.00
Interagency Agreement		\$ 0.00
<i>OTHER EXTRAMURAL COSTS NOT FUNDED FROM THE REGIONAL ALLOWANCE:</i>		
START Contractor		\$100,000.00
Extramural Subtotal		\$700,000.00
Extramural Contingency	20%	\$140,000.00
<b>TOTAL, REMOVAL ACTION CEILING</b>		<b>\$840,000.00</b>

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

In the absence of the removal action described herein, conditions at the Site can be expected to remain unaddressed, and threats associated with the abandoned hazardous substances will persist.

## VII. OUTSTANDING POLICY ISSUES

There are no precedent-setting policy issues associated with this site.

## VIII. ENFORCEMENT ... For Internal Distribution Only

See attached Enforcement Strategy.



The total EPA costs for this removal action based on full-time accounting practices that will be eligible for cost recovery are estimated to be \$840,000 (extramural costs) + \$100,000 (EPA intramural costs) = \$940,000 X 1.4541 (regional indirect rate) = \$1,366,854<sup>4</sup>.

## IX. RECOMMENDATION

This decision document represents the selected removal action for the Bay Street Mercury Site in Tiverton, RI, developed in accordance with CERCLA, as amended, and is not inconsistent with the National Contingency Plan. The basis for this decision will be documented in the administrative record to be established for the Site.

Conditions at the Site meet the NCP Section 300.415 (b) (2) criteria for a removal action due to the following:

*Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants [§300.415(b)(2)(i)];*

*High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate [§300.415(b)(2)(iv)];*

*The availability of other appropriate Federal or State response mechanisms to respond to the release [§300.415(b)(2)(vii)];*

I recommend that you approve the proposed removal action. The total removal action project ceiling if approved will be \$840,000.

APPROVAL: 

DATE: 9/13/11

DISAPPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

<sup>4</sup> Direct Costs include direct extramural costs \$840,000 and direct intramural costs \$100,000. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site specific costs 45.41% x \$940,000, consistent with the full accounting methodology effective October 2, 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.



Figure 2

Site Diagram

Bay Street Mercury Site  
A Connell Street  
Tiverton, Rhode Island

EPA Region I  
Superfund Technical Assessment and  
Response Team (START) III  
Contract No. EP-W-05-042  
TDD Number: 11-05-0006  
Created by: G. Parrish  
Created on: 24 June 2011  
Modified by: B. Mace  
Modified on: 6 July 2011

LEGEND

— Site Boundary



0 100 200  
Feet

Data Sources:

Imagery: Rhode Island Geographic  
Information System (RIGIS)  
Topos: MicroPath  
All other data: START



STATEMENT OF WORK

Bay Street Mercury Site

Tiverton, Rhode Island

Pursuant to the

Administrative Settlement Agreement and  
Order on Consent for Removal Action

Docket No. CERCLA-01-2012-0012

## **INTRODUCTION**

This Statement of Work ("SOW") identifies the components of work required pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action ("ASOC" or "Order"), Docket No. CERCLA-01-2012-0012. For purposes of this SOW, unless otherwise indicated, all references to the Site shall specifically mean only those portions of the Site which consist of the Right of Way areas ("ROWs") along A Connell Street owned and operated by the Respondent, Town of Tiverton. Under this SOW, the Respondent shall prepare and submit to EPA the items identified below. The Respondent shall implement or submit each item under EPA approval. The removal action conducted under the ASOC and SOW shall abate the potential danger to public health or welfare or the environment which may otherwise result from the actual or threatened release of hazardous substances at or from the Bay Street Mercury Site ("Site").

### **General Requirements:**

1. The Respondent shall communicate freely and frequently with the On-Scene Coordinator ("OSC") prior to and during development of plans and deliverables and, also, continually throughout implementation of approved plans.
2. All actions taken by the Respondent shall be consistent with the National Contingency Plan ("NCP"), found in Title 40, Part 300 of the Code of Federal Regulations (40 C.F.R. Part 300).
3. Unless otherwise indicated, each required plan generated pursuant to this SOW must be submitted by the Respondent to the OSC for approval prior to implementation.
4. By telephone or otherwise, the Respondent shall inform the OSC of any field activity not less than five (5) business days prior to the event. However, for sampling events, three (3) days notice is required, pursuant to paragraph 25 of the ASOC.
5. The Respondent shall perform and complete all activities that the OSC has authorized in accordance with the Order and SOW.
6. The OSC may require the Respondent to alter or expand upon plans after approval, based on new information, changed Site conditions, or subsequently identified deficiencies.

### **Specific Requirements:**

7. The Respondent shall restrict unauthorized access to the Site. Within 3 days of the effective date, the Respondent shall propose for EPA approval a method for restricting unauthorized access to the Site.

8. The Respondent shall generate and submit a Work Plan for EPA approval. The Work Plan shall include a detailed schedule for implementation of the Work Plan. The schedule shall include an estimated date for project completion, noting the completion date for interim activities. THE WORK PLAN IS DUE WITHIN FOURTEEN (14) DAYS AFTER THE EFFECTIVE DATE OF THE ORDER. Using data available from EPA and data the Respondent may generate to delineate the extent of contamination, the Respondent shall submit a technically sound Work Plan that fulfills each of the requirements listed below:
- (a) Identifies planned cleanup actions for the removal and disposal of mercury contaminated soil at the Site to eliminate the conditions that necessitate the removal under Section 300.415(b)(2) of the NCP, as described in the September 13, 2011 Action Memorandum for this Site, attached as Appendix A. The Work Plan shall describe all details of the planned activities, including, but not limited to, details of excavation and removal of contaminated surface soils and capping of any contaminated soils remaining at depth.
  - (b) Identifies cleanup levels and specifies how (through additional sampling or other action) the Respondent will document that cleanup levels have been attained. The Work Plan shall also include the names of laboratories to be used and the EPA standard methods to be used for analysis. The Work Plan shall describe how waste streams involving hazardous substances will be packaged, staged, and prepared for disposal (with applicable name, address, and RCRA identification number of the proposed disposal facility).
  - (c) Identifies other applicable or relevant and appropriate requirements (“ARARs”), and how the Respondent and its Work Plan will comply with them.
  - (d) Outlines maintenance and post-removal site control (if applicable) and how those will be carried out.
  - (e) Describes the monitoring, engineering controls and other actions to be employed, which will demonstrate that the public will not be exposed to contaminants present at the Site as a result of implementing required actions. Air Monitoring (as defined below) to address the off-site migration of airborne contaminants must be specifically addressed in the Work Plan, the Health and Safety Plan (described below), or in a separate, stand-alone plan.

“Monitoring” means to collect and analyze air samples to identify the concentration of airborne contaminants. Monitoring data will provide the basis for determining if additional engineering controls or other actions are necessary to achieve the goal of protection of persons other than site workers. On-site monitoring data used to assure worker protection in accordance with OSHA can be used to meet the requirement in the above paragraph, but must be augmented where such information alone does not demonstrate that off-site exposures are not occurring.

Examples of “engineering controls” include but are not limited to covering soil stockpiles, wetting, limiting the area of excavation, capturing and treating air emissions, and providing a temporary structure over the excavation area. “Other actions” include but are not limited to, posting warning signs, posting a security guard, installing additional permanent or temporary fencing, or any combination of these.

9. The Respondent shall generate and submit a Health and Safety Plan (“HASP”) and a Community Relations Plan (“CRP”) for EPA review and comment. The Respondent shall also submit a Sampling and Analysis Plan (“SAP”) for EPA review, comment and approval. The Respondent shall ensure that each of these plans is consistent with the Work Plan. EACH OF THESE PLANS IS DUE WITHIN FOURTEEN (14) DAYS AFTER THE EFFECTIVE DATE OF THE ORDER.

- (a) *Health and Safety Plan* In addition to meeting the other requirements of the ASOC, as required by Section 300.150 of the NCP, Respondent shall develop and implement an OSHA-compliant, site-specific HASP shall be developed and implemented for the duration of field activities. The HASP shall also include contingency planning. The Respondent shall incorporate all changes to the HASP recommended by EPA and shall implement the plan during the pendency of the removal action.

All employers are responsible for the health and safety of their employees and OSHA compliance. Nothing contained in this SOW or any approved plans shall relieve the Respondent of its liability in this regard.

- (b) *Sampling and Analysis Plan* Respondent shall develop and implement a comprehensive SAP to ensure that all analytical results generated during the removal activities are of known quality and consistent with EPA Region 1’s Quality Assurance Project Plan (“QAPP”) Guidance.
    - (c) *Community Relations Plan* Respondent shall develop and implement a detailed CRP that identifies how the Site management will interact with, and convey information to, residents and businesses abutting or adjacent to the Site, government officials, and the general public.

10. WITHIN FOURTEEN (14) DAYS AFTER EPA APPROVAL OF THE WORK PLAN, the Respondent shall begin implementation of the Work Plan, proceeding according to the schedule approved in the Work Plan.

11. The Respondent shall generate and submit a Completion of Work Report (“CWR”) for EPA Approval WITHIN THIRTY (30) DAYS AFTER COMPLETING THE TASKS OUTLINED IN THE WORK PLAN. In addition to fulfilling the requirements of the ASOC, the CWR will include the information listed below:

- (a) A list of all required activities and a certification that each has been completed in accordance with approved plans.
- (b) A list of all cleanup levels approved by EPA with data showing that these cleanup levels are no longer exceeded at the Site.
- (c) Original photographs with a written description for each.
- (d) Tabular summary of all analytical results.
- (e) Site sketches showing initial conditions, completion of work at interim milestones, and final site conditions, including data showing the completion of work.
- (f) For all off-site shipments of non-hazardous waste and hazardous waste, a legible copy of shipping papers and manifests, respectively.
- (g) Tabular summary of all waste shipped or treated including, but not necessarily limited to, the name of each waste stream, the treatment methods applied, the final disposal facility, state and federal waste codes assigned (if any), the total weight, and the total number of shipments.
- (h) An estimate of the Respondent's costs incurred.

End of Statement of Work