



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



417330

SEP 11 2008

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

St. Regis Paper Co. Site

Rick R. Rothman
Bingham McCutchen LLP
Suite 4400, 355 South Grand Avenue
Los Angeles, CA 90071-3106

Dennis P. Reis
Briggs and Morgan
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Re: St. Regis Paper Company Superfund Site, Cass Lake, MN
Administrative Settlement Agreement and Order on Consent For Feasibility Study

Dear Sirs:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent issued for this Site pursuant to Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9607, and 9622. Thank you for your cooperation.

If you have any questions regarding this Order, please contact Mony Chabria, or Tom Turner, Associate Regional Counsels, at (312) 886-6842 or (312) 886-6613, respectively, or Timothy Drexler, Remedial Project Manager, at (312) 353-4367.

Sincerely yours,

Richard C. Karl, Director
Superfund Division

Enclosure

cc: Minnesota Superfund Program Manager
Leech Lake Band of Ojibwe Program Manager

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

St. Regis Paper Company Superfund Site
Cass Lake, Minnesota

RESPONDENTS

International Paper
BNSF Railway Company

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR FEASIBILITY STUDY

U.S. EPA Region 5
CERCLA Docket No. V-W- '08-C-912

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

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS.....	2
II.	PARTIES BOUND	3
III.	STATEMENT OF PURPOSE	3
IV.	DEFINITIONS	4
V.	U.S. EPA'S FINDINGS OF FACT	6
VI.	CONCLUSIONS OF LAW AND DETERMINATIONS	9
VII.	SETTLEMENT AGREEMENT AND ORDER.....	10
VIII.	DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS	11
IX.	WORK TO BE PERFORMED	13
X.	U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS	17
XI.	DATA AVAILABILITY.....	19
XII.	SITE ACCESS AND INSTITUTIONAL CONTROLS.....	19
XIII.	COMPLIANCE WITH OTHER LAWS	20
XIV.	RETENTION OF RECORDS	21
XV.	DISPUTE RESOLUTION	21
XVI.	STIPULATED PENALTIES	22
XVII.	FORCE MAJEURE	25
XVIII.	PAYMENT OF RESPONSE COSTS	25
XIX.	COVENANT NOT TO SUE BY U.S. EPA	27
XX.	RESERVATIONS OF RIGHTS BY U.S. EPA.....	28
XXI.	COVENANT NOT TO SUE BY RESPONDENTS	29
XXII.	OTHER CLAIMS	29
XXIII.	CONTRIBUTION	30
XXIV.	INDEMNIFICATION	30
XXV.	INSURANCE	31
XXVI.	FINANCIAL ASSURANCE	31
XXVII.	SEVERABILITY/INTEGRATION/APPENDICES	33
XXVIII.	ADMINISTRATIVE RECORD	33
XXIX.	EFFECTIVE DATE AND SUBSEQUENT MODIFICATION.....	33
XXX.	NOTICE OF COMPLETION OF WORK	34

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 ("U.S. EPA") and International Paper, and BNSF Railway Company, ("Respondents"). The Settlement Agreement concerns the preparation and performance of a Feasibility Study ("FS") at the St. Regis Paper Company Superfund Site ("Site") located in Cass County, Minnesota, and the reimbursement for Future Response Costs incurred by U.S. EPA in connection with the FS.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by U.S. EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further re-delegated by the Regional Administrator, U.S. EPA, Region 5, to the Director, Superfund Division, U.S. EPA, Region 5, by U.S. EPA Delegation Nos. 14-14-C and 14-14-D on May 2, 1996.

3. In accordance with Section 104(b) (2) and Section 122(j) (1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), U.S. EPA notified the Leech Lake Band of Ojibwe ("LLBO") Minnesota Pollution Control Agency ("MPCA"), the Minnesota Department of Natural Resources ("MDNR"), the Minnesota Attorney General, the United States Department of the Interior ("DOI"), the United States Bureau of Indian Affairs ("BIA"), the United States Fish and Wildlife Service ("USFWS"), the United States Department of Agriculture ("DOA"), and the United States Forest Service for the Chippewa National Forest ("USFS"), of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal, tribal, and state trusteeship. In accordance with Section 121(f) (1) (F), 42 U.S.C. § 9621(f) (1) (F), U.S. EPA has notified the State of Minnesota (the "State") and the Leech Lake Band of Ojibwe (the "LLBO") of negotiations with potentially responsible parties regarding the implementation of the FS for the Site.

4. U.S. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of liability. The parties agree that nothing in this Settlement Agreement is intended to be, nor shall be deemed to be, an admission of liability or wrongdoing, an admission of the existence of any facts upon which liability or wrongdoing could be based, or a waiver of any defense to any such liability or wrongdoing. Respondents retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the various findings of fact, conclusions of law, and determinations in Sections V and VI of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

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

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

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

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

III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of U.S. EPA and Respondents are to identify and evaluate remedial alternatives that protect human health and the environment by preventing, eliminating, reducing, or controlling any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting an FS for the Site, as more specifically set forth in the Statement of Work ("SOW") in Attachment A to this Settlement Agreement; and to recover response and oversight costs incurred by U.S. EPA with respect to this Settlement Agreement.

10. The Work, as defined in Section IV below, conducted under this Settlement Agreement is subject to approval by U.S. EPA in consultation with its Support Agency Partners and shall provide all appropriate and necessary supplemental information to assess Area conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). For purposes of this Settlement Agreement, U.S. EPA considers "consultation" with Support Agency Partners to be the opportunity for two-way communication, review, and comment regarding the Work. U.S. EPA reserves its final decision-making authority, after appropriate consultation. Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable U.S. EPA guidances, policies, and procedures.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, 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. "Area" shall mean those portions of the Site identified in the SOW (Appendix A) and for which FS work is to be performed.
- 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 XXIX.
- e. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency, and any successor departments or agencies of the United States.
- f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, technical memoranda and other items pursuant to this Settlement Agreement, conducting community relations, providing technical assistance grants to community groups (if any), verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs (including fees), travel costs, costs attributed to support agency partner agreements, laboratory costs, ATSDR costs, the costs incurred pursuant to Paragraph 66 and 68 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) and Paragraph 54 (emergency response).
- g. "Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and restrictive covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

- h. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, 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. "LLBO" shall mean the Leech Lake Band of Ojibwe, a sovereign Indian Tribe whose government is recognized by the United States.
- j. "MPCA" shall mean the Minnesota Pollution Control Agency, and any successor departments or agencies of the State.
- k. "NCP" or "National Contingency Plan" 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 U.S. EPA and Respondents.
- n. "Potential ARARs" shall mean all potentially applicable local, state, tribal, and federal laws and regulations, and all "applicable requirements" or "relevant and appropriate requirements" as defined at 40 C.F.R. § 300.5 and 42 U.S.C. § 9621(d).
- o. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*
- p. "Respondents" shall mean International Paper and BNSF Railway Company.
- q. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral. References to sections in the SOW will be so identified, for example, as "SOW Section V."
- r. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation U.S. EPA-approved submissions. U.S. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by U.S. EPA. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

- s. "Site" shall mean the St. Regis Paper Company Superfund Site, located within the exterior boundaries of the Leech Lake Reservation in Cass County, Minnesota. The Site includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto, including the former operations areas, nearby residential properties, the former City of Cass Lake city dump area, and the area of Fox Creek impacted by Site-related contamination. The Site is depicted generally on the map attached as Appendix B.
- t. "State" shall mean the State of Minnesota.
- u. "Statement of Work" or "SOW" shall mean the Statement of Work for development of an FS for the Site as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.
- v. "Support Agency Partners" shall mean MPCA and LLBO, pursuant to 40 C.F.R. § 300.500, 300.505, and 300.515.
- 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); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- x. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement, the purpose of which is described in Paragraph 1, except those required by Section XIV (Retention of Records).
- y. "Work Plan" shall mean the U.S. EPA-approved Work Plan for the performance of the FS.

V. U.S. EPA'S FINDINGS OF FACT

12. The Site is located in Sections 15 and 16, T145N, R31W in Cass Lake, Minnesota (Cass County), and is located primarily in 125 acres of property that was used as a wood treatment facility from about 1958 until 1985. The Site is located within the exterior boundaries (as recognized by the DOI BIA, 67 Fed. Reg. 46330 (July 12, 2002)) of the Leech Lake Band's Tribal Reservation (see Appendix B, a general description of the Site).

13. From 1957 until 1985, Respondent International Paper ("IP") (or its corporate predecessors) operated a wood preserving operation on a portion of the Site.

14. Since at least 1957, the City of Cass Lake has owned a portion of the Site.

15. Since at least 1957, Respondent BNSF Railway Company has owned, and operated an active railway line on, a portion of the Site.

16. The wood treating process at the Site primarily consisted of pressure treating wood with creosote and pentachlorophenol (PCP). Dioxins/furans occur as impurities in commercial formulations of PCP and, therefore, are present in the wood-treating agents. From 1969 to 1971, ammoniacal copper arsenate (ACA) was used for wood preserving. The active ingredients in ACA were copper (II) oxide and arsenic pentoxide.

17. Wastewater generated as a result of the wood treating operations was discharged to wastewater disposal ponds on the Site between 1957 and 1971. These ponds were covered with sand and replaced by a new wastewater disposal pond which was utilized for the same purpose until 1980. Water from this new pond was used to occasionally spray grass directly south of the pond and in the southwest area of the Site. The pond was also dredged on one occasion and the dredged material was placed around the pond. After 1980, wastewater from the process waste either evaporated in tanks designed for that purpose, was disposed in a manhole located within the Chippewa National Forest that lead to the City of Cass Lake sewage treatment facility, or was reused in the wood treating process.

18. Sludges from the Wood Treatment Facility Area were disposed of on the eastern edge of the Site (specifically, on the southeast and north sides of Pond C) and in a pit located in the Cass Lake City Dump. Sludges and waste oil from the site were periodically burned at the City Dump.

19. During the time period in which Respondent IP's corporate predecessors were disposing of waste at the Cass Lake City Dump, the City of Cass Lake was the owner and operator of the City Dump.

20. Cass Forest Products, Inc., currently owns a portion of the Site.

21. On September 21, 1984 (Fed Reg. 37070), the St. Regis Paper Company Superfund Site was listed on the National Priorities List ("NPL") by publication in the Federal Register pursuant to CERCLA Section 105, 42 U.S.C. § 9605.

22. In February 1985, MPCA and former owner Champion International Corp. ("Champion") reached an agreement on remedial measures to be implemented in order to address the threat to public health and the environment posed by the Site. MPCA and Champion signed two Response Orders by Consent under the Minnesota Environmental Response and Liability Act (MERLA), one for the Wood Treatment Facility Area and one for the City Dump Pit Area. These Orders provided for the following: (1) a Remedial Investigation at the Site; (2) A Feasibility Study; (3) Development and Implementation of the Response Action Plan to abate or minimize the release of hazardous substances from the Site; and (4) Routine monitoring to determine the effectiveness of the implemented response actions.

23. On March 5, 1986 and July 29, 1986 MPCA issued Minnesota Enforcement Decision Documents (MEDDs) calling for (1) the installation of ground water extraction wells, (2) the excavation of sludges and contaminated soil on Site to be deposited in (3) a newly constructed contaminated soil containment vault, (4) long-term operation and maintenance of the ground extraction system and contaminated soil containment vault, (5) long-term monitoring of the ground water to determine the effectiveness of the treatment system,

24. Three Five-Year Reviews, conducted in 1995 by MPCA and in 2000 and 2005 by U.S. EPA, concluded that additional soil sampling and the performance of a Risk Assessment were necessary to determine the adequacy and continuing effectiveness of the Site Remedy.

25. In October 2001, preliminary on- and off-Site sampling of the soil, sediment, groundwater, fish tissue, and surface water was conducted by the U.S. EPA. These sampling activities indicated the following:

- a) Sample values of up to 7,160 ng/kg (TEQ) for dioxin were reported in the soil of the former operations area.
- b) Sample values of up to 23 mg/kg for pentachlorophenol were reported in the soil of the former southwest operations area.

26. U.S. EPA's residential policy level for dioxin in soil is 1,000 ng/kg (TEQ), and the commercial/industrial level is 5,000 to 20,000 ng/kg (TEQ). The U.S. EPA ecological screening level value for pentachlorophenol is 7.6 mg/kg.

27. In July 2003, the U.S. EPA issued a CERCLA Unilateral Administrative Order directing IP to conduct confirmatory soil sampling to further determine the extent of dioxin contamination in on-Site soil.

28. The results of the 2003 sampling confirmed that Site contaminants in some areas were above human health and ecological screening levels. Specifically, some areas of the former operations area exceeded the U.S. EPA residential level and one area exceeded the low end of the commercial/industrial policy level range for dioxin in soil.

29. In December 2003, U.S. EPA issued a CERCLA UAO to IP for dioxin-contaminated soil removal actions in the former Site operations area.

30. In 2005, U.S. EPA and BNSF entered into a CERCLA Administrative Settlement Agreement and Order on Consent for Removal Action (AOC) to BNSF for a dioxin-contaminated soil removal action in the St. Regis former Site operations area lying on BNSF property. Pursuant to Paragraph 73 of the AOC, on September 28, 2006 U.S. EPA notified BNSF that all work required under the AOC had been fully performed.

31. In October 2005, U.S. EPA issued an Interim CERCLA Record of Decision for actions in and near the residential properties adjacent to the St. Regis former operations area. The actions

included interior cleaning, adding an interim soil cover to residential yards, and the application of a dust suppressant to the unpaved roads near the former operations area of the St. Regis Site.

32. In December 2005, U.S. EPA issued a CERCLA UAO to IP for remedial actions related to contaminated house dust under the interim ROD.

33. In October 2006, IP conducted a voluntary CERCLA removal action at the Cass Forest Products property for dioxin-contaminated soil.

34. In August 2004, U.S. EPA issued a CERCLA Unilateral Administrative Order to IP for the performance of a Human Health and Ecological Risk Assessment for the Site. The Assessment was delivered by IP to U.S. EPA for review on September 28, 2007. In sum, the Risk Assessment concluded that human health and ecological risks remain at the Site above acceptable levels. Specifically, the Risk Assessment found:

- a) The future child resident scenario is above acceptable levels for noncancer risk on nearby residential properties.
- b) The utility worker scenario with regard to ground water exposures is above acceptable levels for noncancer risk in a portion of the former operations area.
- c) With the addition of fish consumption to total risk for a residential land use scenario in the former operations area, the cumulative total Site cancer risks are above acceptable levels.
- d) A sample taken near the contaminated soil containment vault that was acutely toxic to soil invertebrates had high values of Site-related contaminants.
- e) Analysis indicates that city dump contaminants including arsenic, barium, chromium, cobalt, lead, manganese, nickel, silver, LPAH, and HPAH are potential contributors to reduced chironomid growth identified in samples taken from the Fox Creek area.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

35. The St. Regis Paper Company Superfund Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

36. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or constitutes “any pollutant or contaminant” that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

37. The conditions described in Paragraphs 12-34 of the Findings of Fact, above, constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

39. Respondents are potentially responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. § 9604, 9607 and 9622.

a. Each Respondent is either a person who generated the hazardous substances found at the Site, a person who at the time of disposal of any hazardous substances owned or operated the Site, a person who arranged for disposal or transport for disposal of hazardous substances at the Site, or is a current owner of a portion of the Site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

b. Respondents International Paper and BNSF Railway Company, as well as the City of Cass Lake and Cass Forest Products, Inc., owned and/or operated a portion 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).

c. Respondents International Paper and BNSF Railway Company, as well as the City of Cass Lake, owned and/or operated portions of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. Respondent International Paper, as well as the City of Cass Lake, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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

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

VII. SETTLEMENT AGREEMENT AND ORDER

42. 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 Respondents 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.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

43. Selection of Contractors, Personnel

a. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondents shall notify U.S. EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, *Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs*, (American National Standard, January 5, 1995), by submitting a copy of the proposed 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/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to U.S. EPA's review, for verification that such persons meet minimum technical background and experience requirements. If Respondents fail to demonstrate to U.S. EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Settlement Agreement, U.S. EPA may take over the Work required by this Settlement Agreement.

b. If U.S. EPA disapproves in writing of any person(s)' technical qualifications, Respondents shall notify U.S. EPA of the identity and qualifications of the replacement(s) within 10 days of the written notice. If U.S. EPA subsequently disapproves of the replacement(s), U.S. EPA reserves the right to terminate this Settlement Agreement and to conduct the complete FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the FS, Respondents shall notify U.S. EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

c. Respondents have selected the following firms as contractors for the performance of the Work under this Settlement Agreement: Barr Engineering; Integral Consulting; and, Premier Environmental. U.S. EPA hereby approves this selection.

44. Within five (5) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to U.S. 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 any Area Work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications

within five (5) days following U.S. EPA's disapproval. Respondents shall have the right to change their Project Coordinator subject to U.S. EPA's right to disapprove. Respondents shall notify U.S. EPA fifteen (15) days before such change is made. The initial notification may be made orally, but shall be promptly followed by a written notification.

45. U.S. EPA has designated Tim Drexler of the Superfund Division, Region 5, as its Project Coordinator. U.S. EPA will notify Respondent of a change in its designation of the Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to:

Tim Drexler, RPM
Remedial Project Manager
U.S. EPA, Superfund Division
77 West Jackson Blvd., SR-6J
Chicago, Illinois 60604-3590

Electronic and hard copies of submissions required by this Settlement Agreement will also be mailed to:

Mr. John Persell
Environmental Director
Leech Lake Band of Ojibwe
6530 U.S. 2 NW
Cass Lake, Minnesota 56633

Ms. Susan Johnson
Project Manager
Minnesota Pollution Control Agency
525 S. Lake Avenue
Suite 400
Duluth, Minnesota 55802

Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies. Respondents shall make submissions electronically according to U.S. EPA Region 5 specifications. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondents. Documents to be submitted to the Respondents shall be sent to:

International Paper
Thomas C. Richardson
Project Manager
6400 Poplar Avenue
Memphis, Tennessee 38197

BNSF Railway Company
Mr. Greg Jeffries, Manager Environmental Remediation
General Office Building
80 44th Avenue NE
Minneapolis, MN 55421

46. U.S. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, U.S. EPA's Project Coordinator shall have the authority consistent with the NCP to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the U.S. EPA Project Coordinator from the Area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

47. U.S. EPA and Respondents shall have the right, subject to Paragraphs 43-44, to change their respective Project Coordinator. Respondents shall notify U.S. EPA fifteen (15) days before such a change is made. The initial notification by either party may be made orally, but shall be promptly followed by a written notice.

48. U.S. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe work and make inquiries in the absence of U.S. EPA, but not to modify the Work Plan or other work plans.

IX. WORK TO BE PERFORMED

49. a. Respondents shall conduct a FS for the Site in accordance with the provisions of this Settlement Agreement, the SOW, the Work Plan, CERCLA, the NCP, U.S. EPA guidance related to remedial investigations and feasibility studies including, but not limited to, the *Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA* (OSWER Directive # 9355.3-01; EPA/540/G-89/004, October, 1988); *Guidance for Data Usability in Risk Assessment* (OSWER Directive #9285.7-05 ; *Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A)*; *Interim Final* (EPA/540/1-89/002), OSWER Directive 9285.7-01A, December 1, 1989; *Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)*, Interim, (EPA /540/R-97/033), OSWER Directive 9285.7-01D, January 1998; guidance referenced in the SOW; and any RI/FS related guidance subsequently issued by U.S. EPA.

b. Respondents shall submit an FS report in accordance with the terms of the SOW. In the FS Report, Respondents shall address the factors required to be taken into account in Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430 of the NCP, 40 C.F.R. § 300.430. In the FS Report, Respondents shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action that protect human health and the

environment by recycling waste or by eliminating, reducing and/or controlling risks posed through each pathway at the Areas. In the FS Report, the Respondents shall evaluate a range of alternatives including, but not limited to, those alternatives described in 40 C.F.R.

§ 300.430(e) and remedial alternatives that utilize permanent solutions and alternative treatment technologies or resource recovery technologies. The FS Report shall include a detailed analysis of individual alternatives against each of the nine evaluation criteria in 40 C.F.R.

§ 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against the nine criteria in 40 C.F.R. § 300.430(e)(9)(iii). Respondents shall submit to U.S. EPA, the State, and LLBO the requested number of copies of all plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the Work Plan in accordance with the approved schedule for review and approval pursuant to Section X (U.S. EPA Approval of Plans and Other Submissions). Upon request by U.S. EPA, Respondents shall submit in electronic form all portions of the FS Report, any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement, including the SOW. Upon approval by U.S. EPA, all deliverables under this Settlement Agreement, including the SOW, shall be incorporated into and become enforceable under this Settlement Agreement.

50. Modification of any plans

a. If at any time during the FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the U.S. EPA Project Coordinator within thirty (30) days of identification. U.S. EPA in its discretion and in consultation with its Support Agency Partners will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

b. In the event of unanticipated or changed circumstances at any Area of the Site, Respondents shall notify the U.S. EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that U.S. EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, U.S. EPA and in consultation with its Support Agency Partners shall modify or amend the Work Plan in writing accordingly. Respondents shall perform the Work Plan as modified or amended.

c. U.S. EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional Work may be necessary to accomplish the objectives of the FS as set forth in the SOW to assure that site characterization activities are fully integrated with the development and evaluation of alternatives in the FS. U.S. EPA may require that Respondents perform these response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete FS.

d. Respondents shall confirm their willingness to perform the additional Work in writing to U.S. EPA within seven (7) days of receipt of the U.S. EPA request. If Respondents

object to any modification determined by U.S. EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the Work Plan or written work plan supplement. U.S. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit U.S. EPA's authority to require performance of further response actions as otherwise provided in this Settlement Agreement.

51. Off-Site Shipment of Waste Material

a. Respondents shall, prior to any off-site shipment of Waste Material from any Area of the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to U.S. EPA's Designated Project 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.

b. Respondents 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. Respondents 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.

c. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the feasibility study. Respondents shall provide the information required by Subparagraph 51b. and 51d. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

d. Before shipping any hazardous substances, pollutants, or contaminants from any Area of the Site to an off-site location, Respondents shall obtain U.S. 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. Respondents shall only send hazardous substances, pollutants, or contaminants from any Area of the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

52. Meetings. Respondents shall make presentations at, and participate in, meetings

at the request of U.S. EPA during the initiation, conduct, and completion of the FS. At U.S. EPA's discretion and as appropriate, Support Agency Partners will be invited to attend. In addition to discussion of the technical aspects of the FS, topics will include anticipated problems or new issues. Meetings will be scheduled at U.S. EPA's discretion.

53. Progress Reports. In addition to the deliverables set forth in this Settlement Agreement, as provided in the SOW, Respondents shall provide to U.S. EPA and its Support Agency Partners monthly progress reports by the 15th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include hard copies and electronic copies (according to U.S. EPA Region 5 specifications) of all results of sampling and tests and all other data received by the Respondents, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for each FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

54. Emergency Response and Notification of Releases.

a. 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, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the U.S. EPA Project Coordinator or, in the event of his/her unavailability, the On Scene Coordinator ("OSC") or the Regional Duty Officer, U.S. EPA Region 5 Emergency Planning and Response Branch at (Tel: (312) 353-2318) of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the U.S. EPA Project Coordinator, the OSC or Regional Duty Officer at (312) 353-2318, the National Response Center at (800) 424-8802, and the Minnesota State Duty Officer at (800) 422-0798. Respondents shall submit a written report to U.S. 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, *et seq.*

X. U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

55. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, including the SOW, U.S. EPA in consultation with its Support Agency Partners shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure in accordance with the schedule in the SOW, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

56. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Subparagraph 55 (a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. Following U.S. EPA approval or modification of a submittal or portion thereof, Respondents shall not thereafter alter or amend such submittal or portion thereof unless directed by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 55(c) and the submission had a material defect, U.S. EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties). U.S. EPA also retains the right to perform its own studies, complete the FS (or any portion of the FS), and seek reimbursement from Respondents for its costs; and/or seek any other appropriate relief.

57. Resubmission of Plans

a. Upon receipt of a notice of disapproval, Respondents shall, in accordance with the schedule in the SOW or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the thirty-day (30) period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 58 and 59.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission unless otherwise directed by U.S. EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. For each Area of the Site where Respondents are conducting FS activities, unless otherwise directed by U.S. EPA, Respondents shall not proceed further with any subsequent activities or tasks until receiving U.S. EPA approval for the following deliverables: FS Work Plan/Field Sampling Plans, Quality Assurance Project Plans, and Sampling and Analysis Plans,

and Draft Feasibility Study Reports. While awaiting U.S. EPA approval on these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Settlement Agreement.

d. For all remaining deliverables not enumerated above in Subparagraph 57 c., Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting U.S. EPA approval on the submitted deliverable. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the FS process.

58. If U.S. EPA disapproves a resubmitted plan, report or other item, or portion thereof, U.S. EPA may direct Respondents to correct the deficiencies. U.S. EPA also retains the right to modify or develop the plan, report, or other item. Respondents shall implement any such plan, report, or item as corrected, modified or developed by U.S. EPA, subject only to their right to invoke the procedures set forth in Section XV (Dispute Resolution).

59. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and U.S. EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by U.S. EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

60. In the event that U.S. EPA takes over some of the tasks, but not the preparation of the FS Report, Respondents shall incorporate and integrate information supplied by U.S. EPA into the final reports.

61. All plans, reports, and other items submitted to U.S. EPA under this Settlement Agreement shall, upon approval or modification by U.S. EPA, be incorporated into and enforceable under this Settlement Agreement. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item submitted to U.S. EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

62. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA. Whether or not U.S. EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to U.S. EPA.

XI. DATA AVAILABILITY

63. Data Availability. At all reasonable times, U.S. EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where Work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its contractor pursuant to this Settlement Agreement; reviewing the progress of Respondents in carrying out the terms of this Settlement Agreement; conducting tests as U.S. EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by Respondents. Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Settlement Agreement. Nothing herein shall be interpreted as limiting or affecting U.S. EPA's right of entry or inspection authority under federal law. All persons accessing the Site under this paragraph shall comply with all approved Health and Safety Plans.

64. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA, LLBO, and the State 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 U.S. 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 it is submitted to U.S. EPA, LLBO, and MPCA, or if U.S. EPA has notified Respondents 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 Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring. Respondents shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondents assert business confidentiality claims.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

65. If any Area of the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA, LLBO, MPCA, and their representatives, including contractors, with access at all reasonable times to such Area of the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement. Unless there is an imminent and substantial endangerment, U.S. EPA, LLBO, and the State of Minnesota shall use best efforts to give Respondent BNSF 48 hours notice of such access as it relates to the above mentioned railway property, and shall strictly comply with the Site Health and Safety Plan. During the course of the Work, U.S. EPA, LLBO and the State of Minnesota shall have continuous access to property owned by BNSF. The parties exercising access acknowledge that the BNSF property is industrial property, that they

will exercise due care, and that Respondent BNSF makes no representation or warranties regarding the BNSF property's condition and latent or patent defects, if any. U.S. EPA, LLBO and the State of Minnesota further acknowledge that Respondent BNSF has made available its web-based safety program.

66. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within fourteen (14) days after the Effective Date, or as otherwise specified in writing by the U.S. EPA Project Coordinator. Respondents shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access, provided however, that Respondents shall not be required to pay sums of money for access to property owned by another PRP. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for demanded costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs).

67. Notwithstanding any provision of this Settlement Agreement, U.S. EPA, LLBO, and MPCA retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

68. If Respondents cannot obtain access agreements, U.S. EPA may obtain access for Respondents, perform those tasks or activities with U.S. EPA contractors, or terminate the Settlement Agreement. In the event that U.S. EPA performs those tasks or activities with U.S. EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to that property, and shall reimburse U.S. EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables.

XIII. COMPLIANCE WITH OTHER LAWS

69. Respondents shall comply with all applicable local, tribal, state and federal laws and regulations when performing the Work at the Site. No local, tribal, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal, tribal, or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal, tribal, or state statute or regulation.

XIV. RETENTION OF RECORDS

70. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after commencement of construction of any remedial action for any Area of the Site, each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after commencement of construction of any remedial action for any Area of the Site, Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

71. At the conclusion of this document retention period, Respondents shall notify U.S. EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondents shall deliver any such records or documents to U.S. EPA. Respondents 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 Respondents assert such a privilege, they shall provide U.S. 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 Respondents. 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.

72. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all U.S. 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.

XV. DISPUTE RESOLUTION

73. 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.

74. If Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify U.S. EPA in writing of their objection(s) within thirty (30) days of such action, unless the objection(s) has/have been resolved informally. U.S. EPA and Respondents shall have sixty (60) days from U.S. EPA's

receipt of Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of U.S. EPA. Such extension may be granted verbally but must be confirmed in writing to be effective.

75. 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 U.S. EPA management official at the Superfund Branch Chief level or higher will issue a written decision. U.S. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' 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, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. Respondents shall proceed in accordance with U.S. EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the Work in accordance with U.S. EPA's final decision, U.S. EPA reserves the right in its sole discretion to conduct the Work itself, to seek reimbursement from Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

XVI. STIPULATED PENALTIES

76. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 77 and 78 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the Work under this Settlement Agreement or any activities contemplated under any of the Work Plan, work plans or other plans 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 U.S. EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

77. Stipulated Penalty Amounts - Work

a. The following stipulated penalties shall accrue per day for any noncompliance identified with required Work, including the following: failure to meet due dates for payments of Future Response Costs; failure to establish escrow accounts in the event of disputes; and/or failure to timely or adequately implement work as prescribed in the SOW and any approved Work Plan and Schedules.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1 st through 14 th day

\$ 2,500 15th through 30th day

\$ 5,000 31st day and beyond

78. Stipulated Penalty Amounts - Work Plan, Reports, and Technical Memoranda

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate plans, reports, technical memoranda, or other written documents required by Section III: (Tasks 1 through 4) of the SOW in accordance with the Schedule in Exhibit A of the SOW:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1 st through 14 th day
\$ 1,500	15 th through 30 th day
\$ 2,500	31 st day and beyond

79. Respondents shall be liable for stipulated penalties in the amount of \$1,000 per day for the first week or part thereof and \$2,000 per day for each week or part thereof thereafter for failure to meet any other obligation under this Settlement Agreement including the SOW.

80. 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 X (U.S. EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 21st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and (2) with respect to a decision by the U.S. EPA Management Official at the Superfund Branch Chief level or higher, under Paragraph 75 of Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the U.S. EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

82. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures in accordance with Section XV

(Dispute Resolution). All payments to U.S. 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 US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979007, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Region and Site/Spill ID Number (05J2), the title of this Settlement Agreement (including U.S. EPA Docket Number V-W-08-c-912), 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:

Thomas Turner
Staff Attorney
Office of Regional Counsel
Mail Code C-14J
77 West Jackson
Chicago, IL 60604-3590

Tim Drexler
Remedial Project Manager
Superfund Division
Mail Code SR-6J
77 West Jackson
Chicago, IL 60604-3590

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

84. Penalties shall continue to accrue as provided in Paragraph 80 during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

85. If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 82.

86. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that U.S. EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by U.S. EPA), Paragraph 96. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

87. Respondents agree 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, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

88. 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, Respondents shall notify U.S. EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within five (5) business days thereafter, Respondents shall provide to U.S. 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; Respondents' 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 Respondents, 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 Respondents 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.

89. If U.S. 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 U.S. 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 U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

90. Payments for Future Response Costs

a. Respondents shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondents a bill requiring payment that includes Region 5's Itemized Cost Summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 92 of this Settlement Agreement, according with the following procedures.

i. If the payment amount demanded in the bill is for \$10,000 or greater, the payment shall be made to U.S. EPA by EFT in accordance with current EFT procedures to be provided to Respondents by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number (05J2) and U.S. EPA's docket number for this action.

ii. If the amount demanded in the bill is less than \$10,000, the Settling Respondents may, in lieu of the EFT procedures in subparagraph 90(a)(i) make all payments required by this Paragraph by a certified cashier's check or checks made payable to "EPA Hazardous Substance Fund" referencing the name and address of the party making the payment, and the EPA Site/Spill ID number 05J2. Settling Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979096
St. Louis, MO 63197-9000

b. At the time of payment, Respondents shall send notice that payment has been made to:

Thomas Turner
Staff Attorney
Office of Regional Counsel (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604-3590

Tim Drexler
Regional Project Manager
Superfund Division (SR-6J)
77 West Jackson Blvd.
Chicago, IL 60604-3590

c. The total amount to be paid by Respondents pursuant to Subparagraph 90.a. shall be deposited in a St.Regis Paper Company Site Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

91. If Respondents do not pay Future Response Costs within thirty (30) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance of Future Response Costs, respectively. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If U.S. EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 90.

92. Respondents may contest payment of any Future Response Costs under Paragraph 90 if they determine that U.S. EPA has made an accounting error or if they believe U.S. EPA incurred excess costs as a direct result of an U.S. EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the U.S. EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to U.S. EPA in the manner described in Paragraph 90. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally insured bank duly chartered in the State of Minnesota and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the U.S. EPA Project Coordinator 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, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If U.S. EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to U.S. EPA in the manner described in Paragraph 90. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to U.S. EPA in the manner described in Paragraph 90. Respondents 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 XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse U.S. EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY U.S. EPA

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

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

94. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. 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 herein shall prevent U.S. 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and
- h. liability for costs incurred if U.S. EPA assumes the performance of the Work pursuant to Paragraph 96.

96. Work Takeover. In the event U.S. EPA determines that Respondents have ceased implementation of any portion of the Work, are deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, U.S. EPA may assume the performance of all or any portion of the Work as U.S. EPA determines necessary. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute U.S. EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Settlement

Agreement, U.S. EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

97. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, 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 the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Minnesota Constitution, the Revised Constitution and Bi-Laws of the Minnesota Chippewa Tribe, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

98. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 95 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

XXII. OTHER CLAIMS

100. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents.

101. Except as expressly provided in Section XIX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.

102. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review.

XXIII. CONTRIBUTION

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

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 the Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 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) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

104. Respondents 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 Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree 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 Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

106. Respondents waive 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 any one or more of Respondents and any person for performance of Work on or relating to the Site. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

107. Prior to commencing any On-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$2,000,000, combined single limit, naming the United States as an additional insured. Within the same period, Respondents shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. Respondents 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, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to U.S. 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 Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

108. Within 30 days of the Effective Date, at least one of the Respondents shall establish and maintain financial security, for the benefit of U.S. EPA, in the amount of \$500,000 in one or more of the following forms, in order to secure the full and final completion of the Work by Respondents:

- 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 U.S. EPA, issued by financial institution(s) acceptable in all respects to U.S. EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to U.S. EPA;

- d. a policy of insurance issued by an insurance carrier acceptable in all respects to U.S. EPA, which ensures the payment and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; including a demonstration that any such company satisfied the financial test requirements of 40 C.F.R. § 264.143(f);
- f. a corporate guarantee to perform the Work by one or more of Respondents, including a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. § 264.143(f); and/or
- g. any other financial mechanism acceptable to and approved by U.S. EPA.

109. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to U.S. EPA, determined in U.S. EPA's sole discretion. In the event that U.S. 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, Respondents shall, within thirty (30) days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 108, above. In addition, if at any time U.S. EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to U.S. EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

110. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 108.e. or 108.f. of this Settlement Agreement, Respondents shall (i) demonstrate to U.S. 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, to U.S. EPA.

111. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 108 of this Section, Respondents 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. Respondents shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from U.S. EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution) and may reduce the amount of security in accordance with U.S. EPA's written decision resolving the dispute.

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

XXVII. SEVERABILITY/INTEGRATION/APPENDICES

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

114. This Settlement Agreement, including its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement 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" is the SOW.
- "Appendix B" is the map of the Site.

XXVIII. ADMINISTRATIVE RECORD

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

XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

116. This Settlement Agreement shall be effective the day the Settlement Agreement is signed by the Director of the Superfund Division or his/her designated representative.

117. This Settlement Agreement may be amended by mutual agreement of U.S. EPA and Respondents. Amendments shall be in writing and shall be effective when signed by U.S. EPA. U.S. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

118. No informal advice, guidance, suggestion, or comment by the U.S. EPA Project Coordinator or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their 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.

XXX. NOTICE OF COMPLETION OF WORK

119. When U.S. EPA in consultation with its Support Agency Partners determines, 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 but not limited to payment of Future Response Costs or record retention, U.S. EPA will provide written notice to Respondents. If U.S. EPA in consultation with its Support Agency Partners determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the FS work plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved FS work plan and shall submit the required deliverable(s) in accordance with the U.S. EPA notice. Failure by Respondents to implement the approved modified FS work plan shall be a violation of this Settlement Agreement.

The Undersigned Party(ies) enter(s) into this Administrative Settlement Agreement and Order on Consent for a Feasibility Study in the matter of the St. Regis Paper Company Superfund Site.

Agreed this ____ day of _____, 2008.

For Respondent International Paper

Signature: _____

Name: _____

Title: _____

Address: _____

Agreed this 26 day of August, 2008.

For Respondent BNSF Railway Company

Signature: Greg Jeffries

Name: Greg Jeffries

Title: Mgr Env. Remediation

Address: 80 44th Ave. NE Minneapolis, MN 55421

The Undersigned Party(ies) enter(s) into this Administrative Settlement Agreement and Order on Consent for a Feasibility Study in the matter of the St. Regis Paper Company Superfund Site.

Agreed this 22 day of August, 2008.

For Respondent International Paper

Signature: V. David B. Struhs

Name: DAVID B. STRUHS

Title: V.P. Environmental Affairs

Address: 6400 Poplar Ave., Memphis, TN

Agreed this ___ day of _____, 2008.

For Respondent BNSF Railway Company

Signature: _____

Name: _____

Title: _____

Address: _____

It is so ORDERED AND AGREED this 11th day of SEPTEMBER, 2008.

BY:

Richard C Karl

DATE:

9-11-08

Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

EFFECTIVE DATE:

SEPTEMBER 11, 2008

Appendix A

STATEMENT OF WORK FOR A FEASIBILITY STUDY FOR THE ST. REGIS PAPER COMPANY SUPERFUND SITE IN CASS COUNTY, MINNESOTA

I. PURPOSE

This Statement of Work ("SOW") sets forth the requirements for conducting a Feasibility Study ("FS") at the St. Regis Paper Company Superfund Site ("Site").

The Site is located in Cass County in Minnesota, within the exterior boundaries of the Leech Lake Reservation. This SOW addresses the original former operations area, nearby residences, and the former City of Cass Lake city dump (see Site Map, Appendix B).

The FS report shall evaluate alternatives for addressing the impact to human health and the environment from hazardous substances, pollutants, or contaminants at the Site.

The Respondents shall prepare and complete the FS report in compliance with the FS Administrative Order on Consent ("AOC"); this SOW; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended; the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (40 C.F.R. Part 300), as amended; and all requirements and guidance for RI/FS studies and reports including, but not limited to, U.S. EPA Superfund *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA* (OSWER Directive # 9355.3-01, EPA/540/G-89/004, October 1988) ("RI/FS Guidance"); and, any other guidance that the U.S. EPA uses in conducting or submitting deliverables for a RI/FS.

The Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the FS, except as otherwise specified herein.

This SOW is intended to achieve an expedited cost-effective FS at the Site using iterative approaches and flexible planning, as appropriate. All phases of the FS will be a collaborative process between the Respondents and U.S. EPA, in consultation with U.S. EPA's Support Agency Partners, the Leech Lake Band of Ojibwe (LLBO) and the Minnesota Pollution Control Agency (MPCA). The parties will meet and confer on a regular basis and seek to anticipate and resolve key issues in advance of document development and completion. The U.S. EPA, at its discretion, will invite the Support Agency Partners to participate, as appropriate, in any meetings.

II. DOCUMENT REVIEW

The Respondents shall submit all documents or deliverables required as part of this SOW, including supporting data ("FS Documents"), in electronic and hard copy to the U.S. EPA, with copies to the MPCA and LLBO, for review and approval in accordance with Section X of the AOC.

To support document development and review, the parties will use a series of meetings and calls. During scoping of the tasks and/or when preparing a draft document for submittal to U.S. EPA and its Support Agency Partners, the Respondents shall meet or confer with U.S. EPA, with an opportunity for LLBO and MPCA to participate, to discuss all project planning decisions, special concerns, and/or preliminary findings. After receipt of a draft document for review and approval

in accordance with Section X of the AOC, U.S. EPA, at its sole discretion, may meet or confer with Respondents to give preliminary Agency feedback on the document. The U.S. EPA, at its discretion, will invite the Support Agency Partners to participate, as appropriate, in any meetings.

III. SCOPE

The Respondents shall complete the following tasks as part of the FS:

Task 1: FS Work Plan

Task 2: Development and Screening of Alternatives (Technical Memoranda)

Task 3: Detailed Analysis of Alternatives (FS Report)

Task 4: Progress Reports

Details regarding the aforementioned four tasks are specified below.

TASK 1: FS WORK PLAN

1.1 FS Work Plan

In accordance with the Schedule in Exhibit A to this SOW, the Respondents shall submit a draft FS Work Plan to U.S. EPA, with copies to LLBO and MPCA, for review and approval in accordance with Section X of the AOC. Prior to submittal of the document, the Respondents shall meet or confer with U.S. EPA, with invitations to LLBO and MPCA to participate, to discuss the scope and likely content of the document. The Respondents shall prepare the FS Work Plan to be consistent with applicable portions of the RI/FS Guidance. The document shall set forth Site-specific general approaches and concepts with the intent of streamlining preparation of the work plan and minimizing review times for future deliverables.

TASK 2: DEVELOPMENT AND SCREENING OF ALTERNATIVES

The Respondents shall develop and screen an appropriate range of remedial alternatives that will be evaluated in the FS. The alternative array will build on the FS Workplan, as appropriate. The range of alternatives shall include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which vary in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative.

The conclusions of the September 2007 Risk Assessment (RA) document the positive impact the 2006 Site Interim Remedy has had on temporarily reducing human health risk to the residential area of the St. Regis Site (OU7). However, two of the nine criteria to be considered in evaluating remedial alternatives under the NCP, long-term effectiveness and permanence, were not considered in the selection of the Interim Remedy. As such, alternatives in the FS for the final Site remedy must include options that provide for long-term and permanent reduction of risk in the residential area. At a minimum, an alternative that includes the excavation of soil on residential properties should be included in the array of alternatives to be developed.

While the September 2007 Risk Assessment documented that exposures to surface contaminants in the Former Operations Area are within the Agency's acceptable risk range for commercial/industrial use, unacceptable risks were identified for workers performing excavations. Additionally, the Former Operations Area shows unacceptable risk from surface contamination under a future residential scenario. Finally, migration of soils from the Former Operations Area through surface runoff and wind-blown dust have been documented at the Site. Alternatives in the FS must, therefore, include remedial options for addressing risk at the Former Operations Area by addressing: 1) the future residential scenario; 2) migration risk to the nearby residential properties and roads; and 3) any contamination risk to workers at the Site. At a minimum, an alternative that includes covering contaminated areas to prevent contaminant migration and sufficient controls to prevent worker exposures and future potential residential use in the Former Operations Area should be included in the array of alternatives to be developed.

Concerning ecological risk, the FS must evaluate alternatives that characterize and address contaminated soil in the area of high worm mortality located in the southwestern portion of the Site's Contaminated Soil Containment Vault. In addition, since Site contaminants were not ruled out as impacting the growth of invertebrates in the City Dump Area of Fox Creek, the FS must evaluate alternatives for remediation of Fox Creek. Therefore an alternative that includes further characterization for contaminant excavation of the area of high invertebrate mortality and an evaluation of remediation of the Fox Creek Area against the nine criteria should be included.

The Respondents shall perform the following activities as a function of the development and screening of remedial alternatives:

The Respondents shall prepare and submit to U.S. EPA, LLBO, and MPCA a technical memorandum for this task. An Alternatives Screening Technical Memorandum shall be submitted in accordance with the Schedule in Exhibit A to this SOW. Comments on the Alternatives Screening shall be addressed in the draft FS.

2.1 Alternatives Screening Technical Memorandum

The Alternatives Screening Technical Memorandum shall summarize the work performed and the results of each of the above tasks, and shall include an alternatives array summary. If required by U.S. EPA in consultation with Support Agency Partners, the Respondents shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process, and shall include:

2.1.1 Remedial Action Objectives

The Respondents shall develop Remedial Action Objectives ("RAOs"). Based on the baseline human health and ecological risk assessments, the Respondents shall document the RAOs which shall specify the contaminants of concern ("COCs") and media of concern, potential exposure pathways and receptors, and contaminant level or range of levels (at particular locations for each

exposure route) that are protective of human health and the environment. RAOs shall be developed by considering the factors set forth in 40 C.F.R. § 300.430(e)(2)(i).

2.1.2 Identify Areas or Volumes of Media

In the Alternatives Screening Technical Memorandum, the Respondents shall identify areas or volumes of media to which response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The Respondents shall also take into account the chemical and physical characterization of the Area.

2.1.3 Identify, Screen, and Document Remedial Technologies

Based on the Preliminary Remedial Technology Screening Document, in the Alternatives Screening Technical Memorandum, the Respondents shall identify and evaluate applicable technologies and eliminate those that cannot be implemented at the Area. The Respondents shall evaluate process options on the basis of effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. The Respondents shall summarize and include the technology types and process options in the Alternatives Screening Technical Memorandum. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

2.1.4 Assemble and Document Alternatives

The FS must identify all potential Applicable or Relevant and Appropriate Federal, State and Tribal requirements (ARARs) and non-promulgated criteria, advisories, guidance, and policies issued by Federal, State, or Tribal governments to be considered (TBC) requirements for contaminant concentration and excavation and how the alternatives meet those potential ARARs and TBCs. At this time, U.S. EPA considers the following as potential ARARs or TBCs:

- the U.S. EPA Policy for dioxin soil contamination
- the MPCA soil reference values
- the Leech Lake Band of Ojibwe Hazardous Substances Control Act
- the MPCA Guidance on Incorporation of Planned Property Use Into Site Decisions
- the LLBO Property Re-Acquisition Policy

If necessary, the Respondents shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening shall preserve the range of treatment and containment alternatives that was initially developed. The Respondents shall specify the reasons for eliminating alternatives during the preliminary screening process.

The Respondents shall assemble the selected representative technologies into alternatives for each affected medium. Together, all of the alternatives shall represent a range of treatment and

containment combinations that shall address the Area as a whole. The Respondents shall prepare a summary of the assembled alternatives and their related potential ARARs and TBCs.

TASK 3: DETAILED ANALYSIS of ALTERNATIVES (“FS REPORT”)

Building on the previous FS Documents the Respondents shall conduct and present a detailed analysis of remedial alternatives to provide U.S. EPA, in consultation with its Support Agency Partners, with the information needed to select a remedy.

3.1 Detailed Analysis of Alternatives

The Respondents shall conduct a detailed analysis of the remedial alternatives for each identified Area. Each detailed analysis shall include an analysis of each remedial option measured against each of the nine evaluation criteria set forth in 40 C.F.R. § 300.430(e)(9)(iii) and as listed below in Section 3.1.1, and a comparative analysis of all options using the same nine criteria as a basis for comparison.

3.1.1 Apply Nine Criteria and Document Analysis

The Respondents shall apply the nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will protect human health and the environment and meet remedial action objectives; will comply with or include a waiver of ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: 1) overall protection of human health and the environment and how the alternative meets each of the remedial action objectives; 2) compliance with ARARs; 3) long-term effectiveness and permanence; 4) reduction of toxicity, mobility, or volume through treatment; 5) short-term effectiveness; 6) implementability; 7) cost; 8) state and tribal acceptance; and 9) community acceptance. (Note: criteria 8 and 9 will be considered after the FS report has been released to the general public.) For each alternative, the Respondents shall provide: 1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with that alternative, and 2) a discussion of the individual criterion assessment. If the Respondents do not have direct input on criteria 8, state and tribal acceptance, and 9, community acceptance, U.S. EPA will address these criteria in consultation with its Support Agency Partners.

3.1.2 Compare Alternatives Against Each Other and Document the Comparison of Alternatives

The Respondents shall perform a detailed comparative analysis between the remedial alternatives. That is, the Respondents shall compare each alternative against the other alternatives using the nine evaluation criteria as a basis of comparison. U.S. EPA in consultation with its Support Agency Partners will identify and select the preferred alternative.

3.1.3 Alternatives Analysis for Institutional Controls

For any alternative that relies on Institutional Controls, Respondents shall include an evaluation of the following: 1) *Overall Protection of Human Health and the Environment* including what specific institutional control components will ensure that the alternative will remain protective and how these specific controls will meet remedial action objectives; 2) *Compliance with ARARs*; 3) *Long Term Effectiveness* including the adequacy and reliability of institutional controls and how long the institutional control must remain in place; 4) *Short Term Effectiveness* including the amount of time it will take to impose the Institutional Control; 5) *Implementability* including research and documentation that the proper entities (e.g., potentially responsible parties, state, local government entities, local landowners, conservation organizations) are willing to enter into any necessary agreement or restrictive covenant with the proper entities and/or that laws governing the restriction exist or allow implementation of the institutional control; 6) *Cost* including the cost to implement, maintain, monitor and enforce the institutional control; and 7) *State and Community Acceptance* of the Institutional Control.

3.2 Feasibility Study Report

In accordance with the Schedule in Exhibit A to this SOW, the Respondents shall prepare and submit a draft FS Report to U.S. EPA, MPCA, and LLBO for review and approval pursuant to Section X of the AOC. The FS report shall summarize the development and screening of the remedial alternatives and present the detailed analysis of remedial alternatives. In addition, the FS Report shall also include the information U.S. EPA, in consultation with its Support Agency Partners, will need to prepare relevant sections of the Record of Decision ("ROD") for the Site [see Chapters 6 and 9 of EPA's *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (EPA/540/R-98/031, OSWER Publication 9200.1-23P, July 1999) for the information that is needed].

TASK 4: PROGRESS REPORTS

4.1 Monthly Progress Reports

The Respondents shall submit written Monthly Progress Reports to U.S. EPA, LLBO and the MPCA concerning actions undertaken pursuant to the AOC and this SOW, in accordance with the Schedule in Exhibit A to this SOW, unless otherwise directed in writing by the U.S. EPA RPM. These reports shall include, but not be limited to, a description of all significant developments during the preceding period, including the specific work that was performed and any problems that were encountered; paper and electronic copies (formatted according to U.S. EPA specifications) and a summary of the analytical data that was received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and actual or planned resolutions of past or anticipated problems. The monthly progress reports will summarize the field activities conducted each month including, but not limited to drilling and sample locations, depths and descriptions; boring logs; sample collection logs; field notes; problems encountered; solutions to problems; a description of any modifications to the procedures outlined in the Work Plans, with justifications for the modifications; a summary of all data received during the reporting period and the analytical results; and upcoming field activities. In addition, the Respondents shall provide the U.S. EPA RPM or the entity designated by the U.S. EPA RPM with all laboratory

data within the monthly progress reports and in no event later than ninety (90) days after samples are shipped for analysis.

4.2 Semi-Annual Progress Reports

In accordance with the Schedule in Exhibit A to this SOW, the Respondents shall submit Semi-Annual Progress Reports including underlying data, in hard copy and electronic formats, to U.S. EPA, LLBO, and MPCA. These reports shall address all of the Areas of the Site where Respondents perform FS activities and shall summarize overall progress in completing the work required by the AOC and this SOW. These reports will continue until termination of the AOC, unless otherwise directed in writing by U.S. EPA:

EXHIBIT A
SCHEDULE FOR MAJOR DELIVERABLES

A. Project Start Date

The AOC and SOW establish requirements for an FS where Respondents perform FS activities. The Project Start Date will be the effective date of the AOC.

B. General Schedule

The general schedule described in Table 1 below shall apply for the FS Work, except that the schedule for the FS Work in the Fox Creek Area is described in Table 2.

Table 1

DELIVERABLE DUE DATE – FS WORK	
TASK 1 -- FS Work Plan	Draft FS Work Plan due 45 days after the effective date of the AOC. Final FS Work Plan due 30 days after U.S. EPA direction to modify pursuant to Section X of the AOC.
TASK 2 – Alternatives Screening Technical Memorandum	60 days after submittal of the Final FS Work Plan.
TASK 3 – FS Report	Draft FS Report due 90 days after receipt of U.S. EPA's comments on the Alternatives Screening Technical Memorandum. Final FS Report due 45 days after receipt of U.S. EPA's direction to modify pursuant to Section X of the AOC.
Miscellaneous Documents	In accordance with the submittal date provided by the U.S. EPA RPM.

For the Fox Creek Area of the Site, the following schedule shall apply for the FS Work:

Table 2

DELIVERABLE DUE DATE – FOX CREEK AREA	
TASK 1 -FS Work Plan – Fox Creek Area (or Addendum to FS Work Plan)	Draft FS Work Plan – Fox Creek Area due 20 days after the U.S. EPA approval of the 28-day amphipod study to be conducted by PRP International Paper under the Unilateral Administrative Order issued by U.S. EPA on August 11, 2004. Final FS Work Plan – Fox Creek Area due 10 days after U.S. EPA direction to modify pursuant to Section X of the AOC.
TASK 2 – Alternatives Screening Technical Memorandum – Fox Creek Area (or Addendum to Alternatives Screening Technical Memorandum)	50 days after submittal of the Final FS Work Plan – Fox Creek Area.
TASK 3 - FS Report – Fox Creek Area (or Addendum to FS Report)	Draft FS Report – Fox Creek Area due 70 days after receipt of U.S. EPA's comments on the Alternatives Screening Technical Memorandum – Fox Creek Area. Final FS Report – Fox Creek Area due 25 days after receipt of U.S. EPA's direction to modify pursuant to Section X of the AOC.
Miscellaneous Documents	In accordance with the submittal date provided by the U.S. EPA RPM.

To the extent that any of due dates for deliverables for the Fox Creek Area coincide with or precede the due dates for the same general deliverable, Respondents should incorporate the Fox Creek Area deliverable into the general deliverable. Respondents may submit any of the Fox Creek Area deliverables as an addendum to the same general deliverable or as an independent document.

The general and Fox Creek Area schedules may be modified when: 1) a different schedule is approved by U.S. EPA in a Work Plan or other U.S. EPA-approved document; or 2) the Respondents submits in writing a request for an extension or schedule modification, and U.S. EPA approves any such request.

C. Progress Reports

Respondents shall provide Progress Reports for the FS Work on the following schedule:

TASK 4.1 - Monthly Progress Reports	Due on the 15 th day of each month or the first business day after the 15 th of the month commencing 60 days after the Project Start Date and continuing until the Final FS Report is submitted, covering the previous month.
TASK 4.2 – Semi-annual Progress Reports	Due six months after the effective date of the AOC and every six months thereafter until the Final FS Report is submitted.

D. Periodic Evaluation of the General Schedule

On a periodic basis, starting six months after the effective date of the AOC and every six months thereafter, either the Respondents or U.S. EPA, or each of them, may submit an evaluation with modifications to the General Schedule. If needed, two years after the effective date of the AOC, the frequency of the evaluation of the General Schedule may be changed to an annual evaluation, if U.S. EPA so determines. These periodic evaluations may address such matters as the priorities between Areas and/or OUs, minimizing the time between project start and remedial action, and whether the General Schedule should allow parallel activities at two or more Areas or OUs. Each such evaluation shall be submitted to the other party in writing and shall state the reasons for any proposed changes. No modification will be made to the existing General Schedule without U.S. EPA approval, and such approval shall be at the sole discretion of U.S. EPA. Changes to the Project Start Dates and prioritization may be considered and approved by U.S. EPA due to relative risk issues, multi-site management issues, the need to efficiently allocate available resources, the need for interim responses to releases or potential releases of pollutants or contaminants, or other matters U.S. EPA deems appropriate. If U.S. EPA rejects or modifies a proposed modification to the General Schedule submitted by Respondents, or if Respondents objects to a proposed modification to the General Schedule submitted by U.S. EPA, Respondents may invoke the Dispute Resolution procedures contained in Section XV of the AOC.

EXHIBIT B PARTIAL LIST OF GUIDANCE

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process. The majority of these guidance documents, and additional applicable guidance documents, may be downloaded from the following websites:

<http://www.epa.gov/superfund/pubs.htm> (General Superfund)
<http://clu.in.org> (Site Characterization, Monitoring and Remediation)
<http://www.epa.gov/nrmrl/publications.html> (Site Characterization and Monitoring)
http://www.epa.gov/quality/qa_docs.html#guidance (Quality Assurance)
<http://www.epa.gov/superfund/programs/dfa/index.htm> (Dynamic Field Activities)
<http://www.epa.gov/oswer/riskassessment/toolthh.htm> (Risk Assessment - Human)
<http://www.epa.gov/oswer/riskassessment/ecorisk/ecorisk.htm> (Ecological Risk Assessment)
<http://www.epa.gov/superfund/programs/lead> (Risk Assessment - Lead)
<http://cfpub.epa.gov/ncea> (Risk Assessment - Exposure Factors/Other)
<http://nepis.epa.gov> (General Publications Clearinghouse)
<http://nepis.epa.gov/pubtitle.htm>
<http://www.epa.gov/superfund/programs/lead/products.htm> (General Publications Clearinghouse)

1. The (revised) National Contingency Plan.
2. *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9355.3-01, EPA/540/G-89/004, October 1988.
3. *Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9355.3-11, EPA/540/P-91/001, February 1991.
4. *Implementing Presumptive Remedies: A Notebook of Guidance and Resource Materials*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9378.0-11, EPA/540/R-97/029, October 1997.
5. *Presumptive Remedy for CERCLA Municipal Landfill Sites*, U.S. EPA, OSWER Directive No. 9355.0-49FS, EPA/540/F-93/035, September 1993.
6. *Presumptive Remedies: CERCLA Landfill Caps RI/FS Data Collection Guide*, U.S. EPA, OSWER 9355.3-18FS, EPA/540/F-95/009, August 1995.
7. *Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites*, OSWER 9283.1-12, EPA/540/R-96/023, October 1996.
8. *Field Analytical and Site Characterization Technologies, Summary of Applications*, U.S. EPA, EPA/542/F-97/024, November 1997.

9. *CLU-IN Hazardous Waste Clean-Up Information World Wide Web Site*, U.S. EPA, EPA/542/F-99/002, February 1999.
10. *Field Sampling and Analysis Technologies Matrix and Reference Guide*, U.S. EPA, EPA/542/F-98/013, July 1998.
11. *Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volumes 1 and 2*, U.S. EPA, EPA/625/R-93/003a and b, May 1993.
12. *Use of Airborne, Surface, and Borehole Geophysical Techniques at Contaminated Sites: A Reference Guide*, U.S. EPA, EPA/625/R-92/007(a,b), September 1993.
13. *Innovations in Site Characterization: Geophysical Investigation at Hazardous Waste Sites*, U.S. EPA, EPA/542/R-00/003, August 2000.
14. *Innovative Remediation and Site Characterization Technology Resources*, U.S. EPA, OSWER, EPA/542/F-01/026b, January 2001.
15. *Handbook of Suggested Practices for the Design and Installation of Ground-Water Monitoring Wells*, U.S. EPA, EPA/600/4-89/034, March 1991.
16. *Ground-Water Sampling Guidelines for Superfund and RCRA Project Managers*, U.S. EPA, EPA/542/S-02/001, May 2002.
17. *Ground Water Issue: Low-Flow (Minimal Drawdown) Ground-Water Sampling Procedures*, U.S. EPA, EPA/540/S-95/504, April 1996.
18. *Superfund Ground Water Issue: Ground Water Sampling for Metals Analyses*, U.S. EPA, EPA/540/4-89/001, March 1989.
19. *Resources for Strategic Site Investigation and Monitoring*, U.S. EPA, OSWER, EPA/542/F-01/030b, September 2001.
20. *Region 5 Framework for Monitored Natural Attenuation Decisions for Groundwater*, U.S. EPA Region 5, September 2000.
21. *Ground Water Issue: Suggested Operating Procedures for Aquifer Pumping Tests*, U.S. EPA, OSWER, EPA/540/S-93/503, February 1993.
22. *Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water*, U.S. EPA, EPA/600/R-98/128, September 1998.
23. *Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action and Underground Storage Tank Sites*, U.S. EPA, OSWER Directive 9200.4-17P, EPA/540/R-99/009, April 21, 1999.
24. *Ground Water Issue: Fundamentals of Ground-Water Modeling*, U.S. EPA, OSWER, EPA/540/S-92/005, April 1992.

25. *Assessment Framework for Ground-Water Model Applications*, U.S. EPA, OSWER Directive #9029.00, EPA/500/B-94/003, July 1994.
26. *Ground-Water Modeling Compendium - Second Edition: Model Fact Sheets, Descriptions, Applications and Cost Guidelines*, U.S. EPA, EPA/500/B-94/004, July 1994.
27. *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents*, U.S. EPA, Office of Solid Waste and Emergency Response, OSWER Directive No. 9200.1-23P, EPA/540/R-98/031, July 1999.
28. *Region 5 Instructions on the Preparation of A Superfund Division Quality Assurance Project Plan Based on EPA QA/R-5, Revision 0*, U.S. EPA Region 5, June 2000.
29. *Guidance for the Data Quality Objectives Process (QA-G-4)*, U.S. EPA, EPA/600/R-96/055, August 2000.
30. *Guidance for the Data Quality Objectives Process for Hazardous Waste Sites (QA/G-4HW)*, U.S. EPA, EPA/600/R-00/007, January 2000.
31. *Guidance for Preparing Standard Operating Procedures (QA/G-6)*, U.S. EPA, EPA/240/B-01/004, March 2001.
32. *EPA Requirements for Quality Management Plans (QA/R-2)*, U.S. EPA, EPA/240/B-01/002, March 2001.
33. *EPA Requirements for QA Project Plans (QA/R-5)*, U.S. EPA, EPA/240/B-01/003, March 2001.
34. *Guidance for Quality Assurance Project Plans (QA/G-5)*, U.S. EPA, EPA/600/R-98/018, February 1998.
35. *Users Guide to the EPA Contract Laboratory Program*, U.S. EPA, Sample Management Office, OSWER Directive No. 9240.0-01D, January 1991.
36. *Technical Guidance Document: Quality Assurance and Quality Control for Waste Containment Facilities*, U.S. EPA, EPA/600/R-93/182, September 1993.
37. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part A)*, U.S. EPA, EPA/540/1-89/002, December 1989.
38. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part B, Development of Risk-Based Preliminary Remediation Goals)*, U.S. EPA, EPA/540/R-92/003, OSWER Publication 9285.7-01B, December 1991.
39. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part C - Risk Evaluation of Remedial Alternatives)*, U.S. EPA, Office of Emergency and Remedial Response, Publication 9285.7-01C, EPA/540/R-92/004, December 1991.

40. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part D - Standardized Planning, Reporting, and Review of Superfund Risk Assessments)*, U.S. EPA, Office of Emergency and Remedial Response, Publication 9285.7-47, December 2001.
41. *Risk Assessment Guidance for Superfund: Volume III - Part A, Process for Conducting Probabilistic Risk Assessment*, U.S. EPA, OSWER Publication 9285.7-45, EPA/540/R-02/002, December 2001.
42. *Policy for Use of Probabilistic Analysis in Risk Assessment at the U.S. Environmental Protection Agency*, U.S. EPA, Office of Research and Development, May 15, 1997.
43. *Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors*, U.S. EPA, OSWER Directive 9285.6-03, March 25, 1991.
44. *Exposure Factors Handbook*, Volumes I, II, and III, U.S. EPA, EPA/600/P-95/002Fa,b,c, August 1997.
45. *Supplemental Guidance to RAGS: Calculating the Concentration Term*, U.S. EPA, OSWER Publication 9285.7-08I, May 1992.
46. *Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities*, U.S. EPA, OSWER Directive 9355.4-12, EPA/540/F-94/043, July 14, 1994.
47. *Clarification to the 1994 Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities*, U.S. EPA, OSWER Directive 9200.4-27, EPA/540/F-98/030, August 1998.
48. *Guidance Manual for the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children*, U.S. EPA, OSWER Publication 9285.7-15-1, February 1994; and associated, clarifying Short Sheets on IEUBK Model inputs, including but not limited to OSWER 9285.7-32 through 34, as listed on the OSWER lead internet site at www.epa.gov/superfund/programs/lead/prods.htm.
49. *Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children*, Version 0.99D, NTIS PB94-501517, 1994 or *Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children*, Windows© version, 2001.
50. *Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions*, U.S. EPA, OSWER Directive 9355.0-30, April 22, 1991.
51. *Performance of Risk Assessments in Remedial Investigation /Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)*, OSWER Directive No. 9835.15, August 28, 1990.
52. *Supplemental Guidance on Performing Risk Assessments in Remedial Investigation Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)*, OSWER Directive No. 9835.15(a), July 2, 1991.

53. *Role of Background in the CERCLA Cleanup Program*, U.S. EPA, OSWER 9285.6-07P, April 26, 2002.
54. *Soil Screening Guidance: User's Guide*, U.S. EPA, OSWER Publication 9355.4-23, EPA/540/R-96/018, July 1996.
55. *Soil Screening Guidance: Technical Background Document*, U.S. EPA, OSWER Publication No. 9355.4-17A, EPA/540/R-95/128, May 1996.
56. *Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites* (Peer Review Draft), U.S. EPA, OSWER Publication 9355.4-24, March 2001.
57. *Ecological Risk Assessment Guidance for Superfund: Process for Designing & Conducting Ecological Risk Assessments*, U.S. EPA, OSWER Directive 9285.7-25, EPA/540/R-97/006, June 1997.
58. *Guidelines for Ecological Risk Assessment*, U.S. EPA, EPA/630/R-95/002F, April 1998.
59. *The Role of Screening-Level Risk Assessments and Refining Contaminants of Concern in Baseline Ecological Risk Assessments*, U.S. EPA, OSWER Publication 9345.0-14, EPA/540/F-01/014, June 2001.
60. *Ecotox Thresholds*, U.S. EPA, OSWER Publication 9345.0-12FSI, EPA/540/F-95/038, January 1996.
61. *Issuance of Final Guidance: Ecological Risk Assessment and Risk Management Principles for Superfund Sites*, U.S. EPA, OSWER Directive 9285.7-28P, October 7, 1999.
62. *Guidance for Data Usability in Risk Assessment (Quick Reference Fact Sheet)*, OSWER 9285.7-05FS, September 1990.
63. *Guidance for Data Usability in Risk Assessment (Part A)*, U.S. EPA, Office of Emergency and Remedial Response, Publication 9285.7-09A, April 1992.
64. *Guide for Conducting Treatability Studies Under CERCLA*, U.S. EPA, OSWER Directive No. 9380.3-10, EPA/540/R-92/071a, October 1992.
65. *CERCLA Compliance with Other Laws Manual, Volume I*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9234.1-01, EPA/540/G-89/006, August 1988.
66. *CERCLA Compliance with Other Laws Manual, Volume II*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9234.1-02, EPA/540/G-89/009, August 1989.
67. *Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites*, U.S. EPA, Office of Emergency and Remedial Response, (Interim Final), OSWER Directive No. 9283.1-2, EPA/540/G-88/003, December 1988.

68. *Considerations in Ground-Water Remediation at Superfund Sites and RCRA Facilities - Update*, U.S. EPA, OSWER Directive 9283.1-06, May 27, 1992.
69. *Methods for Monitoring Pump-and-Treat Performance*, U.S. EPA, EPA/600/R-94/123, June 1994.
70. *Pump-and-Treat Ground-Water Remediation: A Guide for Decision Makers and Practitioners*, U.S. EPA, EPA/625/R-95/005, July 1996.
71. *Ground-Water Treatment Technology Resource Guide*, U.S. EPA, OSWER, EPA/542/B-94/009, September 1994.
72. *Land Use in the CERCLA Remedy Selection Process*, U.S. EPA, OSWER Directive No. 9355.7-04, EPA/540/F-95/052, May 25, 1995.
73. *Reuse Assessments: A Tool To Implement The Superfund Land Use Directive*, U.S. EPA, OSWER 9355.7-06P, June 4, 2001.
74. *Reuse of CERCLA Landfill and Containment Sites*, U.S. EPA, OSWER 9375.3-05P, EPA/540/F-99/015, September 1999.
75. *Reusing Superfund Sites: Commercial Use Where Waste is Left on Site*, U.S. EPA, OSWER 9230.0-100, EPA/540/K-01/008, February 2002.
76. *Covers for Uncontrolled Hazardous Waste Sites*, U.S. EPA, EPA/540/2-85/002, September 1985.
77. *Technical Guidance Document: Final Covers on Hazardous Waste Landfills and Surface Impoundments*, U.S. EPA, OSWER, EPA/530/SW-89/047, July 1989.
78. *Engineering Bulletin: Landfill Covers*, U.S. EPA, EPA/540/S-93/500, February 1993.
79. *Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites*, U.S. EPA, OSWER Directive 9285.6-08, February 12, 2002.
80. *Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups*, U.S. EPA, OSWER 9355.0-74FS-P, EPA/540/F-00/005, September 29, 2000.
81. *Health and Safety Requirements of Employees Employed in Field Activities*, U.S. EPA, Office of Emergency and Remedial Response, EPA Order No. 1440.2, July 12, 1981.
82. *OSHA Regulations in 29 CFR 1910.120*, Federal Register 45654, December 19, 1986.
83. *Standard Operating Safety Guides*, PB92-963414, June 1992.
84. *Community involvement in Superfund: A Handbook*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9230.0#3B June 1988; and OSWER Directive No. 9230.0-3C, January 1992.

85. *Contaminated Sediment Remediation Guidance for Hazardous Waste Sites*, EPA/540/R-05/012, OSWER Publication No.9355.0-85, December 2005.

Exhibit C
Partial List of Available Site Investigation Data for Characterizing the
St. Regis Paper Company Superfund Site

	Investigation	Data Generated
Available Data	U.S. EPA Initial Investigation	Soil, sediment, surface water and ground water samples, 2001
	IP Soil Dioxin Investigation	Site soil, 2003
	HH and Ecological Risk Assessment	Soil, sediment, ground water, surface water, fish tissue, invertebrates, wild rice, native plants, and surface water 2004
	Soil Removal Actions	Post-excavation Site soil samples

Notes:

U.S. EPA - United States Environmental Protection Agency

IP - International Paper

St. Regis Paper Company Superfund Site

Cass Lake, Minnesota



0.5 0 0.5 Miles

LEGEND

Map does not depict
Site ownership

Residential Area
contains some commercial
property

