

UNITED STATES DEPARTMENT OF JUSTICE
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10

IN THE MATTER OF:)
)
Former Kaiser Smelter Site,) CERCLA Docket No. 10-2020-0141
Mead, Washington)
)
TriStar North, Inc.,)
)
Lessee)
)
Proceeding Under the Comprehensive) **ADMINISTRATIVE SETTLEMENT**
Environmental Response, Compensation,) **AGREEMENT FOR PAYMENT**
and Liability Act, 42 U.S.C. §§ 9601–9675) **OF RESPONSE COSTS**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement for the Payment of Response Costs (“Settlement”) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (EPA) and TriStar North, Inc. (“Lessee”) (collectively, the “Parties”). This Settlement provides for the payment of certain response costs incurred by the United States at or in connection with the property located at Tax Parcels 36165.9016, 36096.9063, and 36033.0111, Mead, Spokane County, Washington, known as the Former Kaiser Smelter Superfund Site (“Site”).

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional official.

3. The Parties agree that the United States District Court for the Eastern District of Washington will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement, including any action set forth in Section XXVI (Enforcement) of this Settlement.

4. EPA has notified the State of Washington (the “State”) of this action.

5. The Lessee agrees to undertake all actions required by the terms and conditions of this Settlement. In view of the risk of claims under CERCLA being asserted against Lessee upon it becoming an operator of the Property, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XVI (Reservations of Rights by United States), any potential liability Lessee may have to the United States under CERCLA for the Existing Contamination as defined by Paragraph 10 below.

6. The resolution of this potential liability, in exchange for Lessee’s reimbursement of certain response costs, is fair, reasonable, and consistent with the objectives of CERCLA.

7. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Lessee in accordance with this Settlement do not constitute an admission of any liability. Lessee does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. Lessee agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms, or the United States’ right to enforce this Settlement.

II. PARTIES BOUND

8. This Settlement is binding upon the Parties and Lessee's successors and assigns. Any change in ownership or corporate status of Lessee including, but not limited to, any transfer of assets or real or personal property shall not alter Lessee's responsibilities under this Settlement.

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

III. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement, the following definitions shall apply:

"Action Memorandum" means the EPA Action Memorandum relating to the Site signed on June 1, 2020, by the Regional Administrator, EPA Region X, all attachments thereto, and any Amendments determined to be necessary by EPA. The "Action Memorandum" is attached as Appendix A.

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

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

"DOJ" means the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Ecology" means the Washington Department of Ecology and any successor departments or agencies of the State.

"Effective Date" means the effective date of this Settlement as provided in Section XXIIIXXI.

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

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

“Existing Contamination” means:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto or under or from the Property after the Effective Date.

“Institutional Controls” or “ICs” means Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the removal action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

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

“Lessee” means TriStar North Inc.

“National Contingency Plan” or “NCP” means 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.

“OSC” means the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.

“Paragraph” means a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” means the United States and Lessee.

“Property” means that portion of the Site, encompassing approximately 38.2 acres, to be leased by Lessee, which is generally depicted in Appendix B of this Settlement.

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

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Payment of Response Costs and all appendices attached hereto (listed in Section XXIV (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” means the Former Kaiser Smelter Superfund Site, encompassing approximately 600 acres, located at Tax Parcels 36165.9016, 36096.9063, and 36033.0111 in Mead, Spokane County, Washington and depicted generally on the map attached as Appendix C.

“Former Kaiser Smelter Special Account” means the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” means the State of Washington.

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

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous substance” under Chapter 173-340 of the Washington Administrative Code.

IV. STATEMENT OF FACTS

11. The Site consists of a former aluminum smelter facility and a stormwater conveyance and settling pond system for stormwater generated at the facility. Parcel 36165.9016 contains dozens of large industrial buildings, a baghouse, administrative buildings, a network of stormwater catch basins, sumps, storage tanks, a rail spur, and other facility operational features. The former facility’s system of catch basins and storm sewers collect and divert stormwater through a half-mile long aqueduct flowing north from the facility to a pair of settling ponds, located on Parcel 36096.9063. At the northern end of the lower pond, a pipe transfers the water through a second aqueduct that runs approximately 1.25 miles to Parcel 36033.0111 where an effluent outfall discharges stormwater into Deadman Creek.

12. The aluminum smelter was constructed in 1942 and operations continued through 2000. Ownership of the Site shifted through multiple entities from 2000 to the present, and past owners conducted various demolition projects during that time.

13. A portion of the former smelter property was placed on the Superfund National Priorities List (NPL) in 1983. The 50-acre NPL Site, known as the Kaiser Aluminum – Mead Works Potliner Superfund Cleanup Site, is owned by a trust, which is conducting a long-term remedy, overseen by Ecology. The NPL Site consists of spent potliner solid waste, a 25-acre wet scrubber sludge bed, and a plume of groundwater contaminated with cyanide and fluoride. The NPL Site is outside the boundaries of the Site subject to this Settlement.

14. In February 2019, EPA conducted a Preliminary Site Assessment, and in May 2019, conducted a Removal Site Assessment to determine the extent and exposure risks of contamination at the Site.

15. The Site is a place where polychlorinated biphenyls (“PCBs”), fluoride, cyanide, petroleum hydrocarbons, asbestos, and polycyclic aromatic hydrocarbons (“PAHs”), including benzo(a)pyrene, have been released.

16. On June 1, 2020, EPA issued an Action Memorandum for response actions to address releases and threats of releases of PCBs, asbestos, PAHs, and other hazardous substances or pollutants or contaminants. Response actions to be performed include removal of asbestos and PCB-contaminated building siding, asbestos-containing pipe insulation, waste piles, green coke, and coal tar pitch. Additional removal actions under a subsequent Action Memorandum issued on July 2, 2020, include removal of contaminated water and sediment from the stormwater conveyance system and settling ponds, and restoration of the settling ponds to continue functioning as part of the stormwater management system.

17. Lessee is a corporation, incorporated in the State of Washington on October 17, 2018.

18. Lessee intends to lease a portion of Parcel 36165.9016, located within the Site, from the current owner of the parcel, Spokane Recycling Company, LLC, as depicted in Appendix B.

19. Lessee’s use of the Property is part of an effort to reuse the Site in a productive manner in an area that has been underutilized due to contamination at the Site.

V. DETERMINATIONS

20. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

a. The Former Kaiser Smelter Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Statement of Facts above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Lessee is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. EPA determined in an Action Memorandum dated June 1, 2020, that the conditions at the Site may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. PROPERTY REQUIREMENTS

21. **Notices.** Lessee shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

22. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Lessee shall: (i) provide EPA, the State, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property, and to any other property owned or controlled by Lessee that is part of the Site, at all reasonable times and to any other persons that are authorized to conduct response actions or natural resource assessment or restoration at the Property, including those activities listed in Paragraph 22.a (Access Requirements); (ii) exercise appropriate care with respect to hazardous substances found at the Property as described in Paragraph 22.b (Appropriate Care); and (iii) refrain from using such Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions listed in Paragraph 22.c (Land, Water, or Other Resource Use Restrictions).

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

- (1) Verifying any data or information submitted to the United States or the State;
- (2) Conducting investigations regarding contamination at or near the Site;

- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Lessee or its agents consistent with Section VII (Access to Information);
- (6) Assessing Lessee's compliance with the Settlement;
- (7) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement;
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any ICs regarding the Property.

b. **Appropriate Care.** Lessee shall take reasonable steps to

- (1) Stop any continuing releases;
- (2) Prevent any threatened future releases; and
- (3) Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

c. **Land, Water, or Other Resource Use Restrictions.** Lessee shall: (i) remain in compliance with any land use restrictions established in connection with any response action at the Property; (ii) implement, maintain, monitor, and report on Institutional Controls; and (iii) not impede the effectiveness or integrity of any Institutional Control employed at the Property in connection with a response action. The following is a list of land, water, or other resource use restrictions applicable to the Property:

- (1) Prohibiting activities which could interfere with any removal action;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater;
- (4) Ensuring that any new structures on the Property will not be constructed in a manner which could interfere with any removal action; and

- (5) Ensuring that any new structures on the Property will be constructed in a manner which will minimize potential risk of inhalation of contaminants.

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

24. **Notice to Successors-in-Interest.** Except for a transfer of Lessee's interest back to the property owner, Lessee shall, prior to entering into a contract to Transfer its interest in the Property, or sixty (60) days prior to transferring its interest in the Property, whichever is earlier:

- a. Notify the proposed transferee that EPA has selected a removal action regarding the Site, that the Lessee has entered into an Administrative Settlement Agreement requiring compliance with the property requirements in Section VI (identifying the name, docket number, and the Effective Date of this Settlement); and
- b. Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

25. For so long as Lessee is an owner or operator of the Property or any part thereof, Lessee shall require that assignees, successors in interest (including, but not limited to, successors in title, grantees and transferees), and any lessees, sublessees and other parties with rights to use the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Lessee shall require that assignees, successors in interest (including, but not limited to, successors in title, grantees and transferees), and any lessees, sublessees, and other parties with rights to use the Property or any part thereof implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any removal action, and not contest EPA's authority to enforce any land use restrictions and Institutional Controls on the Property or any part thereof.

26. Lessee shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use the Property or any part thereof as of the Effective Date.

27. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions and ICs, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

VII. ACCESS TO INFORMATION

28. Lessee shall comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

29. Lessee shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Lessee's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information.

30. Privileged and Protected Claims

a. Lessee may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Lessee complies with Paragraph 30, and except as provided in Paragraph 31.

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

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

31. **Business Confidential Claims.** Lessee may assert that all or part of a Record provided to EPA under this Section or Section VIII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Lessee shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Lessee asserts business confidentiality claims. Records that Lessee claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Lessee that the Records are not

confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Lessee.

32. Notwithstanding any provision of this Settlement, EPA retains all its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

VIII. RECORD RETENTION

33. For a period of 10 years following the Effective Date, unless EPA agrees in writing to a shorter time period, Lessee shall preserve all documents and information relating to any hazardous substances, pollutants or contaminants found on or released from the Property. At the conclusion of the document retention period, Lessee shall notify EPA at least 90 days prior to the destruction of any such records, and upon request by EPA, except as provided in Paragraph 30 (Privileged and Protected Claims), Lessee shall deliver any such records to EPA. This record retention requirements shall apply regardless of any corporate retention policy to the contrary and 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.

IX. COMPLIANCE WITH OTHER LAWS

34. Nothing in this Settlement limits Lessee's obligations to comply with the requirements of all applicable state and federal laws and regulations.

35. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

X. NOTIFICATION OF RELEASES

36. **Release Reporting.** Upon the occurrence of any event that Lessee is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Lessee shall immediately orally notify the OSC, Brooks Stanfield, at 206-553-4423, or, in the event of his unavailability, the Regional Duty Officer at 206-553-1263, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

37. For any event covered under this Section, Lessee shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XI. PAYMENT OF RESPONSE COSTS

38. **Payment of a One-Time Sum Certain.** Within thirty (30) days of the Effective Date of this Settlement, Lessee shall pay to EPA a sum of \$50,000 in accordance with Paragraph 39 (instructions for payments required by this Settlement).

39. All payments required by this Settlement are to be made in accordance with this Paragraph and shall be made at <https://www.pay.gov>, in accordance with instructions to be provided to Lessee by EPA on the Effective Date. Each payment shall include a reference to the Site/Spill ID 10RK and the EPA docket number for this action:

a. At the time of each payment, Lessee shall send notice that such payment has been made to Brooks Stanfield at stanfield.brooks@epa.gov, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

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

Such notice shall reference Site/Spill ID Number 10RK and the EPA docket number for this action.

b. **Deposit of Payments.** The total amount to be paid by Lessee pursuant to Paragraph 38 (Payment of a One-Time Sum Certain) may be deposited by EPA in the Former Kaiser Smelter Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Former Kaiser Smelter Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Lessee pursuant to the dispute resolution provisions of this Settlement or in any other forum.

40. **Interest.** If any payment is not made by the date required, Lessee shall pay Interest on the unpaid balance. The Interest on the One-Time Sum Certain amount under Paragraph 38 shall begin to accrue on the Effective Date. The Interest shall accrue through the date of Lessee's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Lessee's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XIII (Stipulated Penalties).

XII. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Lessee shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA contends that Lessee is in violation of this Settlement, EPA shall notify Lessee in writing, setting forth the basis for its position. Lessee may dispute EPA's position pursuant to Paragraph 44.

42. **Informal Dispute Resolution.** If Lessee objects to any EPA action taken pursuant to this Settlement, Lessee shall send the OSC and EPA counsel, with a copy to DOJ, a written Notice of Dispute describing the objection(s) within 10 days after such action. EPA and Lessee shall have 30 days from EPA's receipt of Lessee's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Lessee pursuant to this Section shall be in writing and shall, upon signature by EPA and Lessee, be incorporated into and become an enforceable part of this Settlement.

43. **Formal Dispute Resolution.** If EPA and Lessee are unable to reach an agreement within the Negotiation Period, Lessee shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC and EPA counsel, with a copy to DOJ. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Lessee, with a copy to DOJ. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Lessee shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

44. Except as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Lessee under this Settlement. Except as provided in Paragraph 48, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. If Lessee does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIII (Stipulated Penalties).

XIII. STIPULATED PENALTIES

45. Lessee shall be liable to United States for stipulated penalties in the amounts set forth in Paragraphs 46 and 47 for failure to comply with the obligations specified in this Settlement. "Comply" as used in the previous sentence includes compliance by Lessee with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

46. **Stipulated Penalty Amounts – Payments.** The following stipulated penalties shall accrue per violation per day for failure to timely pay the amount due under Paragraph 38:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$800	15th through 30th day
\$1,000	31st day and beyond

47. **Stipulated Penalty Amounts – Other Requirements.** The following stipulated penalties shall accrue per violation per day for failure to meet other requirements of this Settlement, other than those specified in Paragraph 46:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$300	1st through 14th day
\$500	15th through 30th day
\$800	31st day and beyond

48. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA’s decision or order. However, stipulated penalties shall not accrue: with respect to a decision by the EPA management official at the Division Director level or higher, under Paragraph 43 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

50. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Lessee’s receipt from EPA of a demand for payment of the penalties, unless Lessee invokes the Dispute Resolution procedures under Section XII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 39.

51. If Lessee fails to pay stipulated penalties when due, Lessee shall pay Interest on the unpaid stipulated penalties as follows: (a) if Lessee has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 49 until the date of payment; and (b) if Lessee fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 50 until the date of payment. If Lessee fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

52. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Lessee's violation of this Settlement or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that the United States shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement pursuant to Section XVI (Reservations of Rights by United States), Paragraph 58.

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

XIV. CERTIFICATION

54. By entering into this Settlement, Lessee certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Lessee and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. Lessee also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site.

XV. COVENANTS BY UNITED STATES

55. Except as provided in Section XVI (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Lessee pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination and Payments under Section XI (Payment of Response Costs). These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Lessee of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Lessee relating to Lessee's involvement with the Site and the certification made by Lessee in Paragraph 54. These covenants extend only to Lessee and do not extend to any other person.

56. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Lessee if the information provided to EPA by Lessee relating to Lessee's involvement with the Site or the certification made by Lessee in Paragraph 54 is false or in any material respect inaccurate.

XVI. RESERVATIONS OF RIGHTS BY UNITED STATES

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

58. The covenants set forth in Section XV (Covenants by United States) do not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against Lessee with respect to all other matters, including, but not limited to:

- a. liability for failure by Lessee to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- e. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Lessee, its successors, assigns, lessees, or sublessees; and
- f. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site, except as relates to Existing Contamination from the Site or Property.

59. With respect to any claim or cause of action asserted by the United States, Lessee shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

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

XVII. COVENANTS BY LESSEE

61. Lessee covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, Payments under Section XI (Payment of Response Costs), and this Settlement, including, but not limited to:

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

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

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding Existing Contamination, Payments under Section XI (Payment of Response Costs), and this Settlement.

62. These covenants not to sue shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVI (Reservations of Rights by United States), other than in Paragraph 58.a (liability for failure to meet a requirement of the Settlement), or 58.b (criminal liability), but only to the extent that Lessee's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

63. Nothing in this Settlement 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).

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

XVIII. OTHER CLAIMS

65. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Lessee. Neither the United States nor EPA shall be deemed a party to any contract entered into by Lessee or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

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

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

XIX. EFFECT OF SETTLEMENT/CONTRIBUTION

68. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Lessee), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

69. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Lessee has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are Payments under Section XI (Payment of Response Costs), and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person, except the State. However, if the United States exercises rights under the reservations in Section XVI (Reservations of Rights by United States), other than in Paragraphs 58.a (claims for failure to meet a requirement of the Settlement), or 58.b (criminal liability), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

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

71. Lessee shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Lessee shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Lessee shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XX. MODIFICATION

72. Any requirements of this Settlement may be modified in writing by mutual agreement of the Parties, unless otherwise specified in this Settlement.

73. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives shall relieve Lessee of its obligation to comply with all requirements of this Settlement, unless it is formally modified.

XXI. PUBLIC COMMENT

74. This Settlement shall be subject to a thirty (30) day public comment period, after which the United States may withhold its consent or seek to modify this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXII. EFFECTIVE DATE

75. The effective date of this Settlement is the date upon which each of the following have occurred: (a) EPA issues written notice to Lessee that the United States has fully executed the Settlement after review of and response to any public comments received, and (b) Lessee acquires the interest in the Property. Lessee shall notify EPA within five (5) business days of acquiring the interest in the Property.

XXIII. INTEGRATION/APPENDICES

76. This Settlement and all documents approved under and incorporated by reference into this Settlement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix A is the Action Memorandum.
- b. Appendix B is the Map of the Property.
- c. Appendix C is the map of the Former Kaiser Smelter Superfund Site.

XXIV. DISCLAIMER

77. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXV. ENFORCEMENT

78. Notwithstanding Paragraph 55 of this Settlement, if Lessee fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the United States District Court for the Eastern District of Washington. In any such action, Lessee consents to and agrees not to contest the exercise of personal jurisdiction over it by the court. Lessee further acknowledges that venue in the United States District Court for the Eastern District of Washington is appropriate and agrees not to raise any challenge on this basis.

79. If the United States files a civil action as contemplated by Paragraph 78, above, to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity. Lessee shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement or otherwise obtain compliance.

XXVI. NOTICES AND SUBMISSIONS

80. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered, or as of the date of receipt by certified mail/return receipt requested, or express mail.

Submissions to Lessee shall be addressed to:

Peter Howe, President
TriStar North, Inc.
3702 NW Gateway Ave
Vancouver, WA 98660
peter@tristarnw.com

With copies to:

Jay Griffith
Kell, Alterman & Runstein, L.L.P.
520 SW Yamhill Street, Suite 600
Portland, OR 97201
jgriffith@kelrun.com

All submissions to EPA shall be addressed to:

Brooks Stanfield, On-Scene Coordinator
1200 6th Ave., Suite 155, M/S: 13-J07
Seattle, Washington 98101
Stanfield.brooks@epa.gov

Kris Leefers, Assistant Regional Counsel
1200 6th Ave., Suite 155, M/S: 11-C07
Seattle, Washington 98101
Leefers.kristin@epa.gov

All submissions to DOJ shall be addressed to:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(DJ #90-11-2-12315)

Signature Page for Administrative Settlement Agreement regarding the Former Kaiser Smelter Superfund Site (CERCLA Docket No. 10-2020-0141)

IT IS SO AGREED:

BY: 

9/16/20

⁷
Lessee
TriStar North, Inc.
3702 NW Gateway Ave
Vancouver, WA 98660

Date

Signature Page for Administrative Settlement Agreement regarding the Former Kaiser Smelter Superfund Site (CERCLA Docket No. 10-2020-0141)

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

CHRISTOPH Digitally signed by
CHRISTOPHER HLADICK
ER HLADICK Date: 2020.09.17 14:37:00

Chris Hladick
Regional Administrator, Region X
U.S. Environmental Protection Agency
1200 6th Ave., Suite 155
Seattle, Washington 98101

Date: 09/17/2020

Signature Page for Administrative Settlement Agreement regarding the Former Kaiser Smelter Superfund Site (CERCLA Docket No. 10-2020-0141)

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Nathaniel Douglas

Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

Date