

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Portland Harbor Superfund Site
Portland, Multnomah County, Oregon

State of Oregon, acting by and through the
Oregon Department of State Lands and
Oregon Department of Transportation,
and the City of Portland

Respondents

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

CERCLA Docket No. 10-2019-0151

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL DESIGN
OF SITE-WIDE INSTITUTIONAL
CONTROLS IMPLEMENTATION AND
ASSURANCE PLAN AND
INFORMATION MANAGEMENT
PLAN**



TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	PARTIES BOUND.....	2
III.	STATEMENT OF PURPOSE.....	2
IV.	DEFINITIONS	2
V.	FINDINGS OF FACT	6
VI.	CONCLUSIONS OF LAW AND DETERMINATIONS	9
VII.	SETTLEMENT AGREEMENT AND ORDER	9
VIII.	PERFORMANCE OF THE WORK	10
IX.	PROPERTY REQUIREMENTS.....	12
X.	ACCESS TO INFORMATION.....	12
XI.	RECORD RETENTION	14
XII.	COMPLIANCE WITH OTHER LAWS.....	14
XIII.	PAYMENT OF RESPONSE COSTS	15
XIV.	DISPUTE RESOLUTION.....	18
XV.	FORCE MAJEURE.....	18
XVI.	STIPULATED PENALTIES.....	20
XVII.	COVENANTS BY EPA.....	22
XVIII.	RESERVATIONS OF RIGHTS BY EPA	23
XIX.	COVENANTS BY RESPONDENTS	24
XX.	OTHER CLAIMS.....	26
XXI.	EFFECT OF SETTLEMENT/CONTRIBUTION.....	26
XXII.	INDEMNIFICATION	27
XXIII.	FINANCIAL ASSURANCE.....	28
XXIV.	INTEGRATION/APPENDICES.....	32
XXV.	MODIFICATION.....	32
XXVI.	RESPONDENT STATE OF OREGON	33
XXVII.	EFFECTIVE DATE	33

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered voluntarily by the United States Environmental Protection Agency (EPA) and the State of Oregon, acting by and through the Oregon Department of State Lands and the Oregon Department of Transportation, and the City of Portland (Respondents). This Settlement provides for the performance of Remedial Design activities to develop and implement a Programmatic Institutional Control Implementation and Assurance Plan (ICIAP) and Information Management Plan (IMP) by Respondents and the payment by Respondents of certain response costs incurred by the EPA, the Oregon Department of Environmental Quality (ODEQ) and the Tribal Governments at or in connection with the Work conducted under this Settlement, related to the selected remedy for the in-river portion of the Portland Harbor Superfund Site (the Site).

2. This Settlement 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 of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 (CERCLA). This authority was delegated to the EPA Administrator on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority has been re-delegated by the Region 10, Regional Administrator (Regional Administrator) to the Region 10, Director, Environmental Cleanup Office, and Program Managers thereunder by EPA Delegations R10 14-14C and 14-14D (November 30, 2017).

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the natural resource trustees for the Portland Harbor Superfund Site of negotiations with Respondents regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement consistent with the process agreed to in the 2001 Memorandum of Understanding related to the Site.

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections V (Findings of Fact) and VI (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

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

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

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

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Work, and shall condition all contracts entered into under this Settlement on performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. STATEMENT OF PURPOSE

9. The purpose of this Settlement is to develop (a) a Portland Harbor Information Management Plan to coordinate long-term maintenance of, and access to, site information, environmental data management and institutional controls in a centralized data management system; and (b) a Programmatic Institutional Controls Implementation and Assurance Plan. This Settlement does not include or require implementation of either plan.

IV. 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. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Property" shall mean any real property at the Site and any other real property not owned or managed by Respondents where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the Work under this Settlement Agreement.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“City” shall mean the City of Portland, a municipal corporation.

“Day” or “day” shall mean 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.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXVII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“EPA Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation, ¶ 62 (Work Takeover), ¶ 84 (Access to Financial Assurance), ¶ 16 (Community Involvement Plan (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by Agency for Toxic Substances and Disease Registry (ATSDR) related to the Site, and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIV (Dispute Resolution) and all reasonable litigation costs. Future Response Costs shall also include all Interim Response Costs Respondents have agreed to pay under this Agreement that have accrued pursuant to 42 U.S.C. § 9607(a) during the period from April 1, 2018, to the Effective Date.

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

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

ICIAP and IMP Remedial Design

Administrative Settlement Agreement and Order on Consent - 3

“ODEQ” shall mean the Oregon Department of Environmental Quality and any successor departments or agencies of the State.

“ODEQ Response Costs” shall mean all direct and indirect costs that ODEQ incurs in coordinating and consulting with EPA in conjunction with EPA’s planning and implementation of this Settlement Agreement. ODEQ Response Costs are only those costs incurred to fulfill the requirements of this Settlement, including review of plans, reports, and assessments prepared pursuant to this Settlement Agreement and Community Involvement activities; and scoping, planning, and negotiating this Settlement Agreement, but excluding any costs related to natural resource damages assessments, liability or restoration. ODEQ Response Costs are not inconsistent with the NCP, 40 C.F.R. Part 300, and are recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607. ODEQ Response Costs shall not include the costs of oversight or data gathered by ODEQ concerning any other response action or Settlement Agreement associated with the Site.

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

“Parties” shall mean EPA and Respondents.

“Portland Harbor Special Account” shall mean 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), through prior settlements related to the Site.

“Portland Harbor Superfund Site” or “Site” for purposes of this Settlement shall mean the in-river portion of the site in Portland, Multnomah County, Oregon listed on the National Priorities List (NPL) on December 1, 2000, 65 Fed. Reg. 75179-01, and for which a final remedy was selected in the January 2017 Record of Decision. As described in the Record of Decision, the Site extends in-river from approximately river mile (RM) 1.9 to 11.8 and is depicted generally on the map attached as Appendix B.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site, signed on January 3, 2017, by the Administrator of EPA, and all attachments, amendments or modifications thereto. A copy of the ROD can be found at <https://semspub.epa.gov/work/10/100036257.pdf>.

“Remedial Action” or “RA” shall mean the remedial action selected in the ROD.

“Remedial Design” or “RD” shall mean those activities to be undertaken by Respondents to develop the Programmatic Institutional Control Implementation and

Assurance Plan and Information Management Plan for the Site as stated in the Statement of Work (SOW).

“Respondents” shall mean the State of Oregon, acting by and through the Oregon Department of State Lands and Oregon Department of Transportation, and the City of Portland.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent 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.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to implement the RD, which is attached as Appendix A.

“Supervising Contractor” shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Settlement.

“Transfer” shall mean 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.

“Tribal Governments” shall mean the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Nez Perce Tribe. References to “Tribal Governments” in this Settlement Agreement may be a reference to an individual tribe, the tribes collectively, or some combination thereof.

“Tribal Response Costs” shall mean all direct and indirect costs that the Tribal Governments and their employees, agents, contractors, consultants and other authorized representatives incur in coordinating and consulting with EPA in conjunction with EPA’s planning and implementation of this Settlement Agreement. Tribal Response Costs are only those costs incurred to fulfill the requirements of this Settlement Agreement, including review of plans, reports, and assessments prepared pursuant to this Settlement Agreement; development of common positions and coordination among the Tribes; briefings to tribal leaders and tribal communities; and scoping and planning, and negotiating this Settlement Agreement and budgets, but excluding any costs related to natural resource damages assessments, liability or restoration. Tribal Response Costs are not inconsistent with the NCP, 40 C.F.R. Part 300, and are recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607. Tribal Response Costs shall not include the costs of oversight or data gathered by Tribal Governments concerning any other response action or Settlement Agreement associated with the Site.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and any federal natural resource trustee.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous substance” under ORS 465.200 et seq.

“Work” shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section XI (Record Retention).

V. FINDINGS OF FACT

11. Based on available information and investigation, EPA has found:

a. Historical industrial, commercial, agricultural, and municipal practices and releases of contaminants dating back to the early 1900s contributed to the observed chemical distribution of sediments within the Site. Historical sources responsible for the existing contamination include, but are not limited to: ship building, repair and dismantling; wood treatment and lumber milling; storage of bulk fuels and manufactured gas plant waste; chemical manufacturing and storage; metal recycling, production and fabrication; steel mills, smelters and foundries; electrical production and distribution; municipal combined sewer overflows; and stormwater from industrial, commercial, transportation, residential and agricultural land uses. Operations that continue to exist today include: bulk fuel storage; barge building; ship repair; automobile scrapping; recycling; steel manufacturing; cement manufacturing; operation and repair of electrical transformers; and many smaller industrial operations, as well as other commercial, agricultural, and municipal practices.

b. On December 1, 2000, the Portland Harbor Superfund Site was listed on the National Priorities List due mainly to concerns about contamination in the sediments and the potential risks to human health and the environment from consuming fish. The most widespread contaminants found at the Site include, but are not limited to, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and dioxins/furans.

c. In 2001, EPA entered into a Memorandum of Understanding for the Site (the MOU) with the Oregon Department of Environmental Quality, National Oceanic and Atmospheric Administration within the Department of Commerce, the United States Fish and Wildlife Service within the Department of the Interior, the Oregon Department of Fish and Wildlife and the Tribal Governments. The MOU, among other things, established the roles and responsibilities between EPA and ODEQ on managing the upland and in-river portions of the Site and set up a framework for technical and legal coordination among EPA and the Natural Resource Trustees; and relative to the Tribal Governments it sought to acknowledge the federal

government's consultation requirements concerning the Site, and to ensure the Tribal Governments' participation in the response actions at the Site.

d. The Tribal Governments have treaty-reserved rights and resources or other rights, interests, or resources in the Site. The National Oceanic and Atmospheric Administration, the United States Department of the Interior, the Oregon Department of Fish and Wildlife, and the Tribal Governments are designated Natural Resource Trustees overseeing the assessment of natural resource damages at the Site. To the extent practicable, EPA intends that the Work under this Settlement will be conducted so as to be coordinated with any natural resource damage assessment and restoration of the Portland Harbor Superfund Site. EPA intends to provide the Tribal Governments and the federal and state Natural Resource Trustees an opportunity to review and comment on plans, reports, and other deliverables submitted by Respondents to EPA under this Settlement.

e. A remedial investigation and feasibility study (RI/FS) was initiated in 2001 and completed in 2017. As part of the RI/FS, baseline human health and ecological risk assessments were conducted to estimate the current and future effects of contaminants in sediments, surface water, groundwater seeps, and fish tissue on human health and the environment. The risk assessments provided the basis for taking action and identified the contaminants of potential concern (COPCs) and exposure pathways that the remedial action should address.

f. The baseline human health risk assessment (BHHRA) estimated cancer risks and noncancer health hazards from exposures to a set of chemicals in sediments (both beach and in-river), surface water, groundwater seeps, and fish tissue from samples collected at the Site.

g. The baseline ecological risk assessment (BERA) estimated risks to aquatic and aquatic-dependent species exposed to hazardous substances associated with the in-river portion of the Site.

h. The BHHRA and BERA concluded that contamination within the Site poses unacceptable risks to human health and the environment from numerous contaminants of potential concern in surface water, groundwater, sediment, and fish tissue. The selected remedy reduced the COPCs to 64 contaminants of concern (COCs) that contribute the most significant amount of risk to the human and ecological receptors. See ROD, Appendix II, Tables 1–5.

i. A subset of the COCs, called focused COCs, was developed in order to simplify analysis and develop and evaluate remedial alternatives for the Site. The focused COCs include PCBs, PAHs, dioxins and furans, and DDx; and they contribute the most significant amount of site-wide risk to human and ecological receptors.

j. PCBs are classified as probable human carcinogens. Children exposed to PCBs may develop learning and behavioral problems later in life. PCBs are known to impact the human immune system and skin, especially in child receptors, and may cause cancer in people. Nursing infants can be exposed to PCBs in breast milk. PCBs can also bioaccumulate in fish, shellfish, and mammals. In birds and mammals, PCBs can cause adverse effects such as anemia and injuries to the liver, stomach, and thyroid gland. PCBs also can cause problems with the immune system, behavioral problems, and impaired reproduction.

k. PAHs are human health and ecological COCs. PAHs are suspected human carcinogens with potential to cause lung, skin, and bladder cancers with occupational exposure. Animal studies show that certain PAHs affect the hematopoietic, immune, reproductive and neurologic systems and cause developmental effects. They can cause inhibited reproduction, delayed emergence, sediment avoidance, and mortality. In fish, PAHs cause liver abnormalities and impairment of the immune system.

l. Dioxins and furans are human health and ecological COCs. Toxic effects in humans include reproductive problems, problems in fetal development or early childhood, immune system damage, and cancer. Nursing infants can be exposed to dioxins and furans in breast milk. Dioxins and furans can bioaccumulate in fish, shellfish, and mammals. Animal effects include developmental and reproductive problems, hemorrhaging, and immune system problems.

m. DDx, which represents collectively DDT and its primary breakdown products dichlorodiphenyldichloroethane (DDD) and dichlorodiphenyldichloroethene (DDE), are human health and ecological COCs. DDT is considered a possible human carcinogen. DDT and DDE are stored in the body's fatty tissues. In pregnant women, DDT and DDE can be passed to the fetus. Nursing infants can be exposed to DDx in breast milk. Laboratory animal studies showed effects on the liver and reproduction. These compounds can accumulate in fish, shellfish and mammals, and can cause adverse reproductive effects such as eggshell thinning in birds.

n. The ROD requires active remediation (dredging, capping and enhanced natural recovery) at areas exceeding the remedial action levels (RALs) for the focused COCs and contaminated riverbanks adjacent to some of those areas. The ROD allows approximately 1,774 acres of sediment to recover naturally. The ROD estimated the remedy would take 13 years to construct.

o. The ROD also selected institutional controls (ICs) at the Site to: (1) protect human health and the environment by limiting exposure to contamination left in place and (2) protect the long-term integrity of the engineered components of the Selected Remedy. The ICs detailed in the ROD are used to supplement engineering controls, as appropriate to prevent or limit exposures, and should not substitute for active response measures or be the sole remediation efforts defined in the ROD.

p. Respondent State of Oregon, acting by and through the Department of State Lands, currently owns or manages, or has owned or managed, certain submerged lands held in trust by the State of Oregon within the Portland Harbor Superfund Site.

q. Respondent State of Oregon, acting by and through the Department of Transportation, currently owns, operates, or has jurisdiction over, or has owned, operated, or had jurisdiction over facilities such as state highways, and certain roads, right of ways, and bridges within the Portland Harbor Superfund Site and from which releases of hazardous substances have occurred.

r. Respondent, City of Portland currently owns property, including city storm drains and outfalls within the Portland Harbor Superfund Site from which releases of hazardous substances have occurred. The City also currently or formerly owned upland property in and adjacent to the Site from which releases of hazardous substances have occurred.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. The Portland Harbor Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Each Respondent is alleged by EPA to be a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

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

f. The RD required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. SETTLEMENT AGREEMENT AND ORDER

13. Based upon EPA's Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record for the Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not

limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VIII. PERFORMANCE OF THE WORK

14. Coordination and Supervision

a. Project Coordinators.

(1) Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents' Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA's designated Project Coordinator is Josie Clark, Remedial Project Manager in Region 10's Office of Environmental Cleanup. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Respondents' Project Coordinators shall meet with EPA's Project Coordinator at least quarterly.

b. Supervising Contractor. Respondents' proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

c. Procedures for Disapproval/Notice to Proceed

(1) Respondents shall designate, and notify EPA, within 10 days after the Effective Date, of the name(s), title(s), contact information, and qualifications of Respondents' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor,

as applicable. If EPA issues a notice of disapproval, Respondents shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

(3) Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 14.c(1) and 14.c(2).

15. **Performance of Work in Accordance with SOW.** Respondents shall develop the Programmatic Institutional Control Plan Implementation and Assurance Plan and Information Management Plan, in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement or SOW shall be subject to approval by EPA in accordance with ¶ 4.5 (Approval of Deliverables) of the SOW.

16. **Community Involvement.** If requested by EPA, Respondents shall conduct community involvement activities related to the Work under EPA's oversight as provided for in, and in accordance with, Section 3 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by EPA under this Section constitute EPA Future Response Costs to be reimbursed under Section XIII (Payment for Response Costs).

17. **Modification of SOW or Related Deliverables**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to carry out the Work consistent with the Statement of Purpose in Section III, then EPA may notify Respondents of such modification. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIV (Dispute Resolution).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Respondents invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Settlement, and Respondents shall implement all work required by such modification. Respondents shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Settlement consistent with the Statement of Purpose in Section III.

IX. PROPERTY REQUIREMENTS

18. **Agreements Regarding Access to Property.** Respondents shall use best efforts to secure access to any Property within the Site if EPA determines such access is necessary to perform the Work required under this Settlement Agreement. Within thirty (30) days of EPA's notice that access is necessary, Respondents shall use best efforts to obtain from the property owner an agreement, enforceable by Respondents and the EPA, providing that the owner shall provide EPA, DEQ, the Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Property to conduct any activity necessary to perform the Work.

19. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute EPA Future Response Costs to be reimbursed under Section XIII (Payment of Response Costs).

20. In the event of any Transfer of a Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access.

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

X. ACCESS TO INFORMATION

22. Respondents 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 their possession or control or that of their contractors or agents relating 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 related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

23. Privileged and Protected Claims

a. Respondents 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 Respondents comply with ¶ 23.b, and except as provided in ¶ 23.c.

b. If Respondents assert such a privilege or protection, they 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, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim 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 Respondents' favor.

c. Respondent(s) may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, 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 Respondent(s) is required to create or generate pursuant to this Settlement.

24. Business Confidential Claims. Respondents may assert that all or part of a Record provided to EPA under this Section or Section XI (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). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as 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 Respondents 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 Respondents.

25. Access to Third-Party Information. The Work under this Settlement includes development of a Site-wide IMP and a Programmatic ICIAP to support the site-specific ICIAPs that will be prepared by individual performing parties and a Site-wide data management platform that will aggregate site-specific data. Site-specific data or institutional control information is not anticipated to be necessary for the Site-wide plans, however, Respondents shall use best efforts to obtain any site-specific information that is not in Respondents' possession or control and that EPA determines is necessary to perform the Work required under this Settlement. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, but does not including employing outside professional assistance or the payment of money to obtain information. If Respondents are unable to accomplish what is

required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, EPA may assist Respondents in obtaining such information or take independent action to obtain the information.

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

XI. RECORD RETENTION

27. Until 10 years after completion of the Remedial Action, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site; provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

28. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided for in ¶ 23 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

29. Each Respondent 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 (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information regarding the Site 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, and state law.

XII. COMPLIANCE WITH OTHER LAWS

30. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state

environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

31. **Permits.** As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local 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.

32. Respondents may seek relief under the provisions of Section XV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 31 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. PAYMENT OF RESPONSE COSTS

33. **Payments by Respondents for EPA Future Response Costs.** Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS Report or similar EPA-prepared cost summary report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 60 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 35 (Contesting EPA Future Response Costs).

b. **Payments.** Payments made pursuant to this Paragraph 33 shall be made by EFT in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, the Site name, the EPA Region, the account number 10QW, and the EPA docket number for this action. Respondents shall send the check to:

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

Respondents shall use the following address for payments made by overnight mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101-1229

c. **Notice.** At the time of payment, Respondents shall send notice that payment has been made to EPA to the Region 10 Project Coordinator and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

d. **Deposit of EPA Future Response Costs Payments.** The total amount to be paid by Respondents pursuant to ¶33.a (Periodic Bills) shall be deposited by EPA in the Portland Harbor 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 an EPA Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Portland Harbor 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 EPA Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

34. **Interest.** If any payment for EPA Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the EPA by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

35. **Contesting EPA Future Response Costs.** Respondents may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any EPA Future Response Costs billed under ¶ 33 (Payments for EPA Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of EPA Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the EPA Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested EPA Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested EPA Future Response Costs to EPA in the manner described in ¶33, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal

Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested EPA 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. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 33. 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 EPA in the manner described in ¶33. 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 XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its EPA Future Response Costs.

36. Payment of ODEQ Response Costs

a. Respondents shall be responsible under this Settlement for funding ODEQ Response Costs incurred pursuant to this Settlement that are not inconsistent with the NCP under the terms of a separate agreement to be executed by Respondents and ODEQ ("ODEQ Agreement").

b. Disputes regarding ODEQ Response Cost bills shall be resolved in accordance with a process agreed to between ODEQ and Respondents under the ODEQ Agreement, and neither ruled by nor conducted under the dispute resolution provisions of this Settlement.

c. Nothing in this Paragraph shall be construed to limit ODEQ's authority under any source other than this Settlement to seek funding from Respondents or any other party of any costs that ODEQ may incur or may have incurred.

37. Payment of Tribal Response Costs

a. Respondents shall be responsible under this Settlement for funding Tribal Response Costs incurred pursuant to this Settlement that are not inconsistent with the NCP under the terms of one or more separate agreement(s) to be executed by Respondents and the Tribal Governments.

b. Disputes regarding Tribal Response Cost bills shall be resolved in accordance with a process agreed to between the Tribal Governments and Respondents under the separate agreement(s) entered into between Respondents and the Tribal Governments, and neither ruled by nor conducted under the dispute resolution provisions of this Settlement.

c. Nothing in this Paragraph shall be construed to limit the Tribal Governments' authority under any source other than this Settlement to seek funding from

Respondents or any other party of any costs that the Tribal Governments may incur or may have incurred.

XIV. DISPUTE RESOLUTION

38. 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. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

39. **Informal Dispute Resolution.** If Respondents object to any EPA action taken pursuant to this Settlement, including billings for EPA Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 20 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' 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 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.

40. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent(s) shall, within 20 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Regional Administrator, EPA Region 10 or his/her designee will issue a written decision on the dispute to Respondent(s). EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent(s) shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

41. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 35 (Contesting Future Response Costs), as agreed by EPA.

42. Except as provided in ¶52, 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. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

43. "Force Majeure" for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or

of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Environmental Cleanup Office, EPA Region 10, within 48 hours of when Respondents first knew that the event might cause a delay. Within 10 days thereafter, Respondents shall provide in writing to EPA 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; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 43 and whether Respondents have exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

46. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), they shall do so no later than 20 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by

a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 43 and 44. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

47. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement; provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XVI. STIPULATED PENALTIES

48. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 49.a and 50 for failure to comply with the obligations specified in ¶¶ 49.a and 50, unless excused under Section XV (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement or as otherwise agreed by EPA pursuant to the terms of this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 4.5(a)(2) of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

49. Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 49.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500	1st through 7th day
\$ 1,000	8th through 14th day
\$ 2,500	15th through 30th day
\$ 5,000	31st day and beyond

b. Obligations

(1) Payment of any amount due under Section XIII (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 35 (Contesting Future Response Costs).

(4) Submission of timely and quality deliverables for tasks listed under ¶ 4.4 (a)-(d) of the SOW.

50. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 49.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 250	1st through 7th day
\$ 500	8th through 14th day
\$ 1,000	15th through 30th day
\$ 2,500	31st day and beyond

51. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of \$75,000 or 25% of the cost of the Work EPA performs, whichever is less. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 62 (Work Takeover) and 84 (Access to Financial Assurance).

52. 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 45 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 4.5 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent(s) in writing of any deficiency; and (b) with respect to a decision by the Regional Administrator, EPA Region 10 or his/her designee under Section XIV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Regional Administrator or designee 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.

53. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph.

54. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIV (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 ¶ 33 (Payments for Future Response Costs).

55. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have 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 ¶ 52 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 54 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

56. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

57. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement 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 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 in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover).

58. 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.

XVII. COVENANTS BY EPA

59. **Covenants for Respondents by EPA.** Except as provided in Section XVIII (Reservation of Rights by EPA), 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 performed and Future Response Costs paid. These covenants shall take

effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XVIII. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- 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 violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

62. Work Takeover

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 62.a Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 62.b. Funding of Work Takeover costs is addressed under ¶ 84 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in ¶ 40 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 62.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 62.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 40 (Formal Dispute Resolution).

d. 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.

XIX. COVENANTS BY RESPONDENTS

63. **Covenants by Respondents.** Except as provided in paragraph 64 below, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or contractors or employees, with respect to the Work, EPA Future Response Costs, ODEQ Future Response Costs, Tribal Future Responses 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 under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, EPA Future Response Costs, and this Settlement; or

ICIAP and IMP Remedial Design

Administrative Settlement Agreement and Order on Consent - 24

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

64. This Settlement Agreement shall not have any effect on claims or causes of action that any Respondents have or may have (a) against the United States on behalf of various federal agencies, related to Respondents' future implementation of any institutional controls or data management obligations identified or created pursuant to the Work or (b) pursuant to Sections 107(a) or 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) or 9613(f), against the United States on behalf of various federal agencies, based upon a claim that the United States is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Work, EPA Future Response Costs, ODEQ Response Costs, and Tribal Response Costs paid under Section XIII (Payment of Response Costs) of this Settlement Agreement. However, the United States acknowledges the reservation of Section 107 claims without any concession that, even if such a claim exists, it is cognizable under Section 107.

65. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by EPA), other than in ¶ 61.a (liability for failure to meet a requirement of the Settlement), 61.d (criminal liability), or 61.e (violations of federal/state law during or after implementation of the Work), 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.

66. 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).

67. Respondents reserve, 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 Respondents' deliverables or activities.

XX. OTHER CLAIMS

68. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

69. Except as expressly provided in Section XIX (Covenants by Respondents) and Section XVII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.

70. 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).

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

71. 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 XIX (Covenants by Respondents), 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 in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

72. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is 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, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work.

73. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent 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).

74. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement. This paragraph shall not apply to a suit or claim between a Respondent and its insurers or alleged insurers.

75. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVII (Covenants by EPA).

XXII. INDEMNIFICATION

76. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents, to the extent permitted by Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), and their contractor(s) shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, and representatives from any and all claims, causes of action or 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, negligent or other wrongful acts or omissions of Respondents, or their commissioners, officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. 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. Neither Respondents nor any such contractor shall be considered an agent of the United States.

77. 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.

78. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States on behalf of EPA 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, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States on behalf of EPA 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, including, but not limited to, claims on account of construction delays.

XXIII. FINANCIAL ASSURANCE

79. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of \$2.3 million ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A demonstration by a Respondent that it meets the financial test criteria of ¶ 81, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

e. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 81.

80. Respondents shall, within 30 days of the Effective Date, obtain EPA's approval of the form of Respondents' financial assurance. Within 30 days of such approval, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA Project Coordinator.

81. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 79.d or 79.e, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) The affected Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations

financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

82. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 79.d or 79.e must also:

a. Annually resubmit the documents described in ¶ 81.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 81.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

83. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 85 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

84. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 62.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 84.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 84.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 62.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 79.d or 79.e then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 84 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Portland Harbor Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 84 must be reimbursed as Future Response Costs under Section XIII (Payments for Response Costs).

85. Modification of Amount, Form, or Terms of Financial Assurance.

Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 80, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph within 45 days of receipt of Respondents' request. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute,

the agreement or written decision resolving such dispute under Section XIV (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 80.

86. Release, Cancellation, or Discontinuation of Financial Assurance.

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (b) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV (Dispute Resolution)].

XXIV. INTEGRATION/APPENDICES

87. This Settlement and its appendices 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 SOW.
- b. Appendix B is a map of the Site.

XXV. MODIFICATION

88. The EPA Project Coordinator may modify any plan, schedule, or deliverable in writing. The EPA Project Coordinator can make modifications to work being performed in the field by oral direction in order to address immediate issues or unforeseen circumstances that arise. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

89. If Respondents seek permission to deviate from any approved work plan, schedule, or SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 88.

90. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVI. RESPONDENT STATE OF OREGON

91. Notwithstanding anything in this Settlement to the contrary, nothing in this Settlement is to be construed to permit or require the Respondent, the State of Oregon to take any action that exceeds the scope of its authority, or to violate Article XI, § 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations.

XXIXV. NOTICE OF WORK COMPLETION

92. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations as provided in ¶ 83, EPA will provide written notice to Respondents. Respondents may request that EPA make this determination.

93. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RD Work Plan if appropriate to correct such deficiencies. Respondents shall implement the modified and approved RD Work Plan and shall submit a modified Final 100% Report for EPA approval in accordance with the EPA notice. If approved, EPA will issue the Notice of Work Completion.

94. Issuance of the Notice of Work Completion does not affect the following continuing obligations: (1) obligations under Sections IX (Property Requirements), X (Access to Information), and XI (Record Retention); and (3) reimbursement of EPA's Future Response Costs under Section XIII (Payment of Response Costs) of the Settlement.

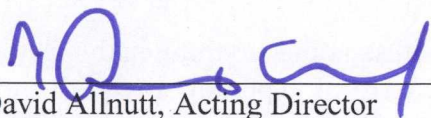
XXVII. EFFECTIVE DATE

95. This Settlement shall be effective upon signature by the Environmental Cleanup Office, EPA Region 10.

96. IT IS SO AGREED AND ORDERED.

U.S. ENVIRONMENTAL PROTECTION AGENCY:

11/5/19
Dated



R. David Allnutt, Acting Director
Superfund and Emergency Management Division
EPA Region 10

STATE OF OREGON:

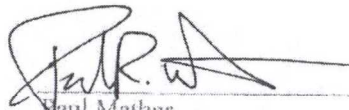
10/4/19
Dated



Vicki L. Walker

~~Interim~~ Director *of*
Oregon Department of State Lands
775 Summer St. NE
Salem, OR 97301-1279

10/3/19
Dated

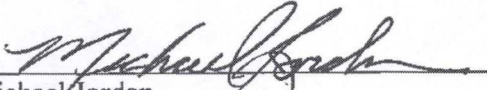


Paul Mather

Deputy Director
Oregon Department of Transportation
355 Capitol St, NE MS 11
Salem, OR 97301

CITY OF PORTLAND:

9/23/19
Dated


Michael Jordan
Director
City of Portland
Bureau of Environmental Services
888 SW Fifth Avenue, Suite 400
Portland, OR 97204

APPENDIX A

**ICIAP and IMP Remedial Design
Administrative Settlement Agreement and Order on Consent**

**PORTLAND HARBOR INFORMATION
MANAGEMENT PLAN AND PROGRAMMATIC
INSTITUTIONAL CONTROLS IMPLEMENTATION
AND ASSURANCE PLAN
STATEMENT OF WORK**

PORTLAND HARBOR SUPERFUND SITE

Portland, Multnomah County, Oregon

EPA Region 10

September 2019

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	PORTLAND HARBOR INFORMATION MANAGEMENT PLAN AND PROGRAMMATIC INSTITUTIONAL CONTROLS IMPLEMENTATION AND ASSURANCE PLAN	2
3.	COMMUNITY INVOLVEMENT SUPPORT.....	7
4.	DELIVERABLES.....	8
5.	SCHEDULES	10
6.	STATE AND TRIBAL PARTICIPATION.....	11
7.	REFERENCES	11

1. INTRODUCTION

- 1.1 Purpose of the Statement of Work (SOW).** The EPA issued a Record of Decision for the Portland Harbor Superfund Site ("Harbor" or "Site") on January 3, 2017, (the ROD) that selected remedial actions for the in-river portion of the Site from approximately River Miles (RMs) 1.9 to 11.8. The ROD provides information about how design data will influence Remedial Design (RD), remedial construction, and future maintenance of remediated areas. The ROD states that the actual technologies assigned to an area of the river will be dependent on many area-specific characteristics and environmental conditions to ensure that the final constructed remedy is appropriate for those conditions. The ROD identifies post-ROD/RD sampling activities that will support and refine both the Harbor-wide and area-specific conceptual site models (CSMs) and be used for RD and construction as part of remedial action. The ROD also selected use of institutional controls (ICs) to: (1) protect human health and the environment by limiting exposure to contamination left in place and (2) protect the long-term integrity of the engineered components of the Selected Remedy.

This SOW sets forth the basic requirements and tasks for development of a Portland Harbor Information Management Plan (IMP) to coordinate long-term maintenance of and access to site information, environmental data management and institutional controls in a centralized data management system. This SOW also sets forth the procedures and requirements for developing a Programmatic Institutional Controls Implementation and Assurance Plan (ICIAP).

1.2 Structure of the SOW

- Section 2 (Portland Harbor Information Management Plan and Programmatic ICIAP) sets forth the requirements and approach for developing a Portland Harbor Information Management System and the Programmatic ICIAP.
- Section 3 (Community Involvement Support) sets forth EPA and the Respondents' responsibilities for community involvement.
- Section 4 (Deliverables) describes the deliverables required under this SOW including the general requirements regarding Respondents' submission of documents, and EPA's review of, approval of, comments on, and/or modification of those documents.
- Section 5 (Schedules) sets forth the schedule for submitting the required deliverables and routine reporting to EPA established under this ASAOC/SOW.
- Section 6 (State and Tribal Participation) addresses State and Tribal participation.
- Section 7 (References) provides a list of references, including URLs.

- 1.3** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement Agreement, except that the term "Paragraph", or "¶" means a paragraph of the SOW, and the term "Section" means a section of the SOW, unless otherwise stated.

2. PORTLAND HARBOR INFORMATION MANAGEMENT PLAN AND PROGRAMMATIC INSTITUTIONAL CONTROLS IMPLEMENTATION AND ASSURANCE PLAN

The Respondents shall develop a Portland Harbor IMP describing the requirements and specifications for a Portland Harbor Information Management System that will be the repository for both Harbor-wide and site-specific environmental data and institutional controls. Concurrently, the Respondents will develop a Programmatic Institutional Controls Implementation and Assurance Plan (ICIAP). The development of the Portland Harbor IMP and ICIAP will consist of the following activities.

- 2.1 Needs Assessment.** The first step in developing these two plans is to conduct a Needs Assessment to refine the requirements, approach, and content of both the IMP and ICIAP. The Needs Assessment will gather and evaluate information (Harbor-wide and site-specific¹) from agencies and their partners, Tribes, performing parties, and the public related to the management needs for post-ROD environmental data, institutional controls and monitoring, permit coordination, and access requirements. Prior to initiating the Needs Assessment, a Needs Assessment work plan will be developed to ensure that appropriate stakeholders will be consulted and that feedback will be documented in a standardized way. Following completion of the Needs Assessment, a standalone deliverable will be prepared to document the findings of the Needs Assessment. The Needs Assessment will guide development of the IMP and inform the Harbor-wide ICIAP.

It is anticipated that the Needs Assessment will consider the following elements that will be a part of the final IMP:

- (a) Institutional Controls (ICs). Some ICs have been in place for years (e.g., fish advisories), while other Harbor-wide and site-specific ICs will be developed over time. Therefore, developing the framework by which ICs will be documented and tracked (including information regarding how they are implemented, monitored, and enforced) will be an important component of the Harbor-wide Information Management System. The Needs Assessment will evaluate the requirements for documenting and tracking both Harbor-wide and site-specific ICs and be the basis for development of a Programmatic Institutional Control Implementation and Assurance Plan (Programmatic ICIAP) as described in Section 2.3. The Needs Assessment for ICs will include review of case studies and lessons learned from development of institutional control registries at other cleanup sites and information from the Interstate Technology and Regulatory Council's (ITRC's) guidance (ITRC 2016). The Portland Harbor Information Management System (Section 2.2), will serve as a central repository for all IC information, including but not limited to:

¹ Site-specific refers to projects that are being performed at scales less than the entire Harbor under separate ASAOs, and work being conducted outside of the Portland Harbor ROD that is relevant to this Needs Assessment.

- (1) Proprietary Controls
 - (2) Government Controls
 - (3) Enforcement and Permit Tools
 - (4) Harbor-wide ICs (e.g., beach direct contact outreach, fish advisories and recreational access restrictions)
- (b) Permit Coordination and Review. It is anticipated the Needs Assessment will identify potential opportunities to create efficiencies in permit preparation efforts and coordination among agencies in permit issuance. These opportunities will be evaluated and presented in the Programmatic ICIAP and described in the IMP. The Portland Harbor Information Management System can then serve as a platform for respective agencies to coordinate permit reviews of in-water work (e.g., maintenance dredging, pile removal) and help reduce the risk of recontamination to the Site.
- (c) Environmental Data Management System. Results from the Needs Assessment will be used to develop the requirements and specifications for an environmental data management system to be used by performing parties to document and upload environmental data to the Portland Harbor Information Management System. It is anticipated that future agreements with performing parties would include a requirement to provide data to the Portland Harbor Information Management System.
- (d) Access to Site Information. The Respondents will investigate systems that may already exist that could be adapted to suit the long-term data management needs of the Harbor. For example, the National Oceanic and Atmospheric Administration's (NOAA's) Data Integration Visualization Exploration and Reporting (DIVER) Explorer system will be evaluated; even if this system is not employed for Harbor data management, it could be a useful source of ideas and lessons learned. management will be an important tool for dissemination of information to the public, agencies and their partners, and performing parties. The desired attributes for effective access to Harbor information will be identified during the Needs Assessment.

2.2 Prepare Portland Harbor Information Management Plan (IMP). The information gathered during the Needs Assessment will establish the framework for developing a Draft and Final IMP. The IMP may include:

- (a) Description of the roles and responsibilities of participating parties including government agencies, performing parties and key stakeholders.
- (b) Description of the scope and content of the hardware and software architecture that will be developed under a separate ASAOC/SOW based on the requirements and specifications set forth in this IMP. There is a broad range of possibilities for an

information management system, and therefore some requirements will be identified as necessary, and some will be identified as beneficial but not necessary.

- (c) Process for collecting and disseminating site-specific and Harbor-wide institutional controls as specified in the ROD and performing party agreements with EPA.
- (d) Process for collecting and disseminating permit information required for remedy implementation.
- (e) Identification of environmental data that will be uploaded to the Portland Harbor Information Management System.
- (f) A listing of Quality Assurance/Quality Control (QA/QC) requirements to assure accurate and defensible content as mandated by EPA. This may include, but is not limited to, standardized formats for documenting institutional controls ICs, environmental database structure specifications, electronic data deliverable requirements, data identification conventions, EPA Region 10 Scribe.net requirements. (Note: identification of specific database software and hardware configuration is outside of the scope of this IMP.)
- (g) Geospatial data requirements standards including geodetic standards (datums and coordinate systems), and precision and accuracy requirements.
- (h) An outreach strategy that describes where and how environmental data and institutional control information will be provided to stakeholder groups, a schedule for releasing information, and a communication strategy when releasing information.
- (i) Overall schedule for implementing the IMP and completing development of the Portland Harbor Information Management System. (Note: It is recognized that ongoing baseline sampling, site-specific pre-RD sampling, and RD work will generate data during development of this IMP and Portland Harbor Information Management System, and that performing parties will continue to submit data to EPA as required under individual Orders.)

2.3 Prepare Programmatic Institutional Controls Implementation and Assurance Plan (Programmatic ICIAP). A Programmatic ICIAP will be prepared to establish an overall process that documents and tracks Harbor-wide and site-specific IC implementation, monitoring and enforcement. This Programmatic ICIAP is a coordination document for the entire Harbor and will not replace the need for ICIAPs at individual project areas completed by performing parties at those areas. Rather, it will be a living document that provides the framework for the IC program for the Harbor and the formal repository for all Harbor-wide and site-specific IC information. The ROD (Section 14.2.6) described ICs that might be used at the Site to ensure that Harbor-wide remedial goals are achieved and maintained. Categories of ICs identified in the ROD include: (1) Fish Advisories and Educational Outreach, (2) Land Use/Access Restrictions, (3) Waterway Use Restrictions or Regulated Navigation Areas, and (4) additional IC mechanisms may be developed during remedial design and remedial action. The first, Fish Advisories and Educational

Outreach, is a Harbor-wide IC; the second, Land Use/Access Restriction, is a site-specific IC; and the third, Waterway Use Restrictions or Regulated Navigation Areas, is a component of both Harbor-wide ICs (in the form of public outreach and education) and site-specific ICs (because site-specific remedial actions may encompass or require waterway use restrictions to ensure the success of the remedy). Waterway Use Restrictions or Regulated Navigation Areas are also a component of government controls because these restrictions most often involve publicly-owned lands. The ROD also identifies that additional IC mechanisms may be developed during the RD or RA to assure all IC objectives are met and the remedy is protective. Therefore, consistent with the ROD and EPA guidance on ICIAPs, these elements will be detailed in individual sections of the ICIAP. The Programmatic ICIAP will follow applicable guidance, as listed in Section 7 References, and at a minimum will include the following key sections:

- (a) Introduction – Objectives of the Programmatic ICIAP, and overall approach followed in preparing the document
- (b) Harbor-wide Details - Description and overview of the Harbor including identification of key stakeholders.
- (c) Harbor-wide ICs – This section will identify existing or needed Harbor-wide ICs, responsible entities for implementing and monitoring these ICs, and termination process. Examples of Harbor-wide ICs include fish advisories, recreational access information, waterway use restrictions, public education and outreach. With regard to fish advisories, the ICIAP will reference the ROD regarding the use of fish tissue data to inform future fish advisory updates. A description of how the data quality objectives (DQOs) for fish tissue data with regard to fish advisories will be coordinated with the DQOs for remedial action objectives will be included in this section of the ICIAP. Along with advisory updates this section will address the education and outreach processes for those advisories currently under development at local agencies including Multnomah County, or processes that still need to be developed in accordance with the ROD and EPA's revised Community Involvement Plan.

Additionally, this section will identify the entities responsible for implementing, monitoring and enforcing these controls, as well as the termination processes. It will also include IC monitoring procedures and reporting to be conducted to evaluate the status of ICs and whether IC deficiencies and inconsistent uses exist. This section will also describe the organizations responsible for keeping records and reporting information to the appropriate regulatory authorities. Information will be presented in sufficient detail to facilitate implementation of these Harbor-wide actions.

- (d) Site-Specific ICs – The Programmatic ICIAP will support coordination of the multiple site-specific ICs that will be developed by individual performing parties. This section will not identify IC requirements or specific instruments at individual sites which will remain the responsibility of individual performing parties. It will provide a template based on EPA's 2012 ICIAP Guidance that will standardize

collection of basic information needed by relevant agencies, other performing parties, and the public to ensure long-term protectiveness of the remedy. This should help streamline preparation of individual ICIAPs and facilitate a common structure to upload IC information to the Portland Harbor Information Management System.

It is anticipated that future agreements between EPA and performing parties to implement remedial actions will include a requirement to provide IC information to the Portland Harbor Information Management system. This information will include IC monitoring procedures and reporting to be conducted to evaluate the status of ICs and whether IC deficiencies and inconsistent uses exist.

- (e) **Applicable Government Controls** – This section will include an analysis of existing regulations and identify ICs associated with administrative or legal controls that help minimize the potential for human exposure to contamination remaining after the remedy is implemented and protect the remedy by limiting land or resource use. This section will include identification of the scope of existing governmental authorities and needed coordination among those authorities for effective remedy implementation.
- (f) **Permitting Tools and Enforcement** – Permits that may be required to implement elements of the remedy including ICs will be identified. This will include the agency responsible for permit administration, monitoring and enforcement.
- (g) **IC Modification and Termination** – This section will describe the conditions and process for modification and termination of ICs, including the organizations and agencies involved.
- (h) **Description of the Information Management System** – The Portland Harbor Information Management System will serve as the centralized repository for all ICs. This information management system will be developed based upon the requirements and specifications developed in the Portland Harbor Information Management Plan (Section 2.2). The Information Management System will house the IC information and will assist in public outreach and education goals of the ICIAP. This section of the IC Plan will describe how this tool can be used and requirements for IC data upload by performing parties. A public portal to this system will be available to allow residents and entities using the river a means to access information on restrictions and controls within the Harbor.

2.4 Performance of Additional Tasks Identified in the Needs Assessment. EPA and the Respondents will evaluate the results of the Needs Assessment and may agree to amend the SOW or enter into a separate agreement with EPA to perform certain tasks identified in the Needs Assessment. Absent agreement, Respondents are not required to amend the SOW or enter into a separate agreement to perform such additional tasks.

2.5 Develop an Interim Data Sharing Portal. It is recognized that the development and implementation of the Portland Harbor Information Management System may take

several years to complete. During that time, data from the Harbor will continue to be collected and remedial actions will occur. The State will work with the EPA to identify and implement a portal and website for the public to access and download documents and data from the Harbor submitted to the EPA while the Portland Harbor Information Management System is being planned and implemented. The State will work with the EPA to develop an approach and requirements for consistent electronic data reporting for performing parties so that data uploaded to the interim database can be consistently managed. In this way, the interim data can be readily transferred into the final Information Management System upon its completion and launch.

3. COMMUNITY INVOLVEMENT SUPPORT

3.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing Community Involvement (CI) activities at the Harbor. Previously, during the Remedial Investigation/Feasibility Study (RI/FS) phase, EPA developed a Community Involvement Plan (CIP) for the Harbor, and pursuant to 40 C.F.R. § 300.435(c), EPA is updating the existing CIP. During the update, EPA will identify public involvement activities specific to the Work performed under this ASAOC/SOW that are not already addressed or provided for in the existing CIP, including, if applicable, any Technical Assistance Grant, any use of the Technical Assistance Services for Communities contract, and/or any Technical Assistance Plan.
- (b) At EPA's request, Respondents shall participate in CI activities relating to the Work performed under this ASAOC/SOW, including participation in: (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet modification, and (2) public meetings that may be held or sponsored by EPA to explain the Work.

Respondents' support of EPA's CI activities may include providing online access to initial submissions and updates of deliverables under this SOW to: (1) Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP the Respondents' responsibilities for CI activities. All CI activities conducted by Respondents under this ASAOC/SOW will be at EPA's request are subject to EPA's oversight.

Additional public outreach elements related to development of a public portal to the Portland Harbor Information Management System are provided in Section 2.

- (c) Respondents also will explore the possibility of participating in EPA's Superfund Job Training Initiative Program (Super JTI) as it may relate to the Work under this ASAOC/SOW. This program provides job training to communities affected by Superfund sites.

- (d) **Respondents' CI Coordinator.** If requested by EPA, Respondents shall, within 15 days, designate and notify EPA of the Respondents' Community Involvement Coordinator (Respondents' CI Coordinator). Respondents may hire a contractor for this purpose. Respondents' notice must include the name, title, and qualifications of the Respondents' CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's CI activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Work under this ASAOC/SOW.

4. DELIVERABLES

- 4.1 **Applicability.** Respondents shall submit all deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 4.2 (In Writing) through 4.4 (Reporting Deliverables) apply to all deliverables. Paragraph 4.5 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 4.2 **In Writing.** All deliverables under this SOW must be in writing unless otherwise specified.
- 4.3 **General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the Schedule unless a schedule revision is mutually agreed upon between the Respondents and EPA as set forth in Section 5.1. Respondents shall submit all deliverables to EPA in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 11 by 17 inches, Respondents also shall provide EPA with paper copies of such exhibits.
- 4.4 **Reporting Deliverables.** The Respondents shall create the following deliverables under this SOW:
- (a) Draft and Final Needs Assessment Work Plan. This work plan will describe the detailed objectives, scope, schedule, and resources required to complete the Portland Harbor IMP and Programmatic ICIAP.
 - (b) Draft and Final Needs Assessment Findings Report. This report will be prepared and submitted to EPA. The Needs Assessment is a significant activity under this ASAOC/SOW and will shape the development of the Portland Harbor IMP and Programmatic ICIAP. Stakeholders, such as public agencies, performing parties, and community groups will be consulted to determine potential uses of a centralized institutional control and data management repository. The report will include annotated outlines for the Portland Harbor IMP and Programmatic ICIAP to facilitate understanding of the content and structure of these documents.
 - (c) Draft and Final Portland Harbor Information Management Plan. A Portland Harbor IMP will be prepared as described in Section 2 of this SOW. Implementation of the final plan is not included under this SOW. It is recognized that the parties implementing the IMP and developing the platform for the Information Management System may have suggestions for improving the efficiency of certain

elements of the database platform and therefore, the details of the platform as implemented may differ from the final IMP.

- (d) Draft and Final Programmatic Institutional Control Implementation and Assurance Plan. A Programmatic ICIAP will be prepared in accordance with the information presented in Section 2 of this SOW.

4.5 Approval of Deliverables.

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the ASAOC or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) provide notice that EPA is modifying the deliverable; or (v) any combination of the foregoing.
- (2) After providing notice to Respondents, EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved because of material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval of Final Deliverables under Paragraph 4.5 (a) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 4.5 (a) Respondents shall, within 45 days or such longer time as specified by EPA in such notice, correct the deficiencies or address the conditions and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraphs 4.5 (a) (Initial Submissions) or 4.5 (b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the ASAOC; and (2) Respondents shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraphs 4.5 (a) or 4.5 (b) does not relieve the Respondents of any liability for stipulated penalties under Section XVIII (Stipulated Penalties) of

the ASAOC.

5. SCHEDULES

5.1 Applicability and Revisions. All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the schedule set forth and agreed upon by the Respondents and EPA. Respondents may submit a proposed revised schedule, including, as appropriate, elimination or consolidation of deliverables, for EPA approval. Upon EPA's approval, the revised schedules (and, as appropriate, list of deliverables) supersede the schedule set forth below, and any previously approved schedule.

5.2 Schedule

	Description of Deliverable	Paragraph Reference	Deadline
1a	Draft Needs Assessment Work Plan	4.4 (a)	90 days after EPA's Signature of the ASAOC
1b	Final Needs Assessment Work Plan (includes schedule for Needs Assessment)	4.4 (a)	60 days after EPA's comments on the Draft Needs Assessment Work Plan
2a	Draft Needs Assessment Findings Report	4.4 (b)	180 days after approval of the Final Needs Assessment Work Plan
2b	Final Needs Assessment Findings Report	4.4 (b)	60 days after receipt of EPA comments on the Draft Needs Assessment Findings Report
3a	Draft Portland Harbor Information Management Plan	4.4 (c)	180 days after EPA's approval of the Final Needs Assessment Findings Report
3b	Final Portland Harbor Information Management Plan	4.4 (c)	60 days after receipt of EPA comments on the Draft Portland Harbor Information Management Plan
4a	Draft Programmatic ICIAP	4.4(d)	180 days after EPA's approval of the Final Needs Assessment Findings Report
4b	Final Programmatic ICIAP	4.4(d)	60 days after receipt of EPA's comments on the Draft Programmatic ICIAP

6. STATE AND TRIBAL PARTICIPATION

- 6.1 **Copies.** Respondents shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the Oregon Department of Environmental Quality (ODEQ) and Tribal Governments identified in the ASAOC. EPA shall be responsible for coordinating comments with the ODEQ and Tribes to meet the review schedule. Written comments on the deliverables provided to EPA from the Tribes or State shall be provided to the Respondents when EPA provides comments to Respondents.

Respondents shall copy other agency memorandum of understanding partners (Oregon Department of Fish and Wildlife, NOAA, and U.S. Department of the Interior). EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Respondents, send a copy of such document to the DEQ and Tribes and the agency partners.

- 6.2 **Review and Comment.** The ODEQ and Tribes will have a reasonable opportunity for review and comment prior to any EPA approval or disapproval under Paragraph 4.5 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval. Actual timeframe for review of each deliverable will be determined per discussion with EPA.

7. REFERENCES

- 7.1 The following guidance documents, among others, apply to the Work.

- (a) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
https://www.epa.gov/sites/production/files/documents/final_pime_guidance_december_2012.pdf
- (b) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
https://www.epa.gov/sites/production/files/documents/iciap_guidance_final_-_12.04.2012.pdf
- (c) Long-term Contaminant Management Using Institutional Controls, ITRC, <https://institutionalcontrols.itrcweb.org/> (Dec. 2016).

- 7.2 For any guidance referenced in the Settlement Agreement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

APPENDIX B



LEGEND

- Portland Harbor Study Area
- River miles
- Navigation Channel

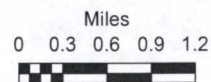


Figure 1. Site Area

Portland Harbor Superfund Site