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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION X**

**IN THE MATTER OF:** )  
)  
**Portland Harbor Superfund Site,** )  
)  
**ATOFINA Chemicals, Inc., Chevron U.S.A. Inc.,** )  
**Gunderson, Inc., Northwest Natural Gas,** )  
**City of Portland, Port of Portland,** )  
**Time Oil Co., Tosco Corporation,** )  
**Union Pacific Railroad Company,** )  
)  
**RESPONDENTS,** )  
)  
**Proceeding Under Sections 104, 122(a), and** )  
**122(d)(3) of the Comprehensive** )  
**Environmental Response, Compensation,** )  
**and Liability Act (CERCLA), as amended,** )  
**42 U.S.C §§ 9604, 9622(a), 9622(d)(3).** )  
\_\_\_\_\_ )

**U.S. EPA Docket Number  
CERCLA-10-2001-0240**

**ADMINISTRATIVE ORDER ON CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

**I. INTRODUCTION**

1. This Administrative Order on Consent (Consent Order or Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the above-captioned Respondents. This Consent Order concerns the preparation of and performance of, and reimbursement for all costs incurred by EPA in connection with a Remedial Investigation and Feasibility Study (RI/FS) for the Portland Harbor Superfund Site (Site) in the state of Oregon.

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## II. JURISDICTION

1. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators by EPA Delegation No. 14-14-C. This authority has been redelegated by the Regional Administrator to the Region X Director, Environmental Cleanup Office, and Unit Managers thereunder. This Consent Order is further supplemented by authority vested in the President of the United States by Section 311(e) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(e), as amended (CWA), and Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.* This authority has been delegated to the Administrator of EPA by Executive Order No. 12777, 58 Fed. Reg. 54757 (1991), and further delegated to the Regional Administrators by EPA Delegation Nos. (2-85, 2-89), and redelegated by the Regional Administrator to the Region X Director, Environmental Cleanup Office.

2. Respondents agree to undertake all actions required by this Consent Order. In any action by EPA or the United States to enforce this Consent Order, Respondents consent to and agree not to contest the authority or jurisdiction of EPA to issue or enforce this Consent Order, and agree not to contest the validity of this Order.

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## III. PARTIES BOUND

1. This Consent Order shall apply to and be binding upon EPA, and shall be binding upon Respondents, their agents, successors, assigns, officers, directors, and principals. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order.

1 The signatories to this Consent Order certify that they are authorized to execute and legally bind the  
2 parties they represent to this Consent Order. No change in the ownership or corporate status of any  
3 Respondent or of any facility or the Site shall alter Respondents' responsibilities under this Consent  
4 Order.

5           2.       Respondents shall provide a copy of this Consent Order to any subsequent owners  
6 or successors before ownership rights are transferred in any corporate acquisition or other transaction  
7 that results in: 1) the transfer of substantially all the assets of any entity that is a signatory to the Consent  
8 Order, or 2) the transfer of substantially all of the assets related to the Site (whether or not that  
9 constitutes substantially all the assets of the entity as a whole), or 3) constitutes a transfer of ownership  
10 rights that results in a change of control of any entity that is a signatory to this Consent Order.

11 Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories,  
12 and consultants which are retained to conduct any work performed under this Consent Order, within  
13 fourteen (14) days after the effective date of this Consent Order or the date of retaining their services,  
14 whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with  
15 this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for  
16 compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors,  
17 consultants, subcontractors, agents, and attorneys comply with this Consent Order, to the extent that  
18 these persons are associated with the Site or perform any work or tasks for or on behalf of Respondents  
19 in furtherance of compliance with this Order.

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#### IV. STATEMENT OF PURPOSE

22           1.       In entering into this Consent Order, the objectives of EPA and Respondents are:  
23 (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or

1 the environment caused by the release or threatened release of hazardous substances, pollutants, or  
2 contaminants at or from the Site, including oil, by conducting an RI including identification of early  
3 actions which shall not be implemented or performed pursuant to this Order; (b) to determine and  
4 evaluate alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy any  
5 release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by  
6 conducting an FS; (c) to recover response and oversight costs incurred by EPA and its Support Agency,  
7 the Oregon Department of Environmental Quality (DEQ), with respect to this Consent Order; and, (d) to  
8 accomplish the objectives as further described in the Statement of Work (SOW) (Attachment A), and the  
9 Stipulation Agreement (Attachment B), which are incorporated into this Order by this reference and  
10 made a part hereof as if fully set forth herein.

11           2.       The activities conducted under this Consent Order are subject to approval by  
12 EPA. Respondents shall provide all appropriate necessary information for the RI/FS for a CERCLA  
13 Record of Decision (ROD) that is consistent with CERCLA and the National Oil and Hazardous  
14 Substance Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as now or hereafter amended. The  
15 activities conducted under this Consent Order shall be conducted in compliance with the NCP and  
16 consistent with all applicable EPA guidance, policies, and procedures.

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18   **V.       FINDINGS OF FACT**

19           EPA makes the following Findings of Fact, which the Respondents neither admit nor  
20 deny:

21           1.       The Site consists of the areal extent of contamination, and all suitable areas in  
22 proximity to the contamination necessary for implementation of response action, at, from and to the  
23 Portland Harbor Superfund Site Assessment Area from approximately River Mile (RM) 3.5 to RM 9.2

1 (Assessment Area), including uplands portions of the Site that contain sources of contamination to the  
2 sediments at, on or within the Willamette River. The boundaries of the Site will be initially determined  
3 upon issuance of a Record of Decision. RI/FS work for uplands facilities is being or will be conducted  
4 pursuant to separate agreements or orders issued by DEQ or EPA and is not covered by this Order which  
5 is for the in-water portion of the Site. Portland Harbor and the River have served as a major industrial  
6 water corridor for more than a century. Industrial use of the Harbor and River has been extensive. The  
7 River is also habitat to wildlife, numerous fish, shellfish, and other aquatic species, including species  
8 listed under the Endangered Species Act (ESA). The Confederated Tribes and Bands of the Yakama  
9 Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of  
10 Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the  
11 Confederated Tribes of the Warm Springs Reservation of Oregon have treaty-reserved rights and  
12 resources, and/or other rights, interests, or resources in the Site.

13           2.       EPA and DEQ have agreed to share responsibility for investigation and cleanup of  
14 the Site. DEQ has the lead responsibility for conducting upland work necessary for source control, and  
15 EPA is the Support Agency for that work, consistent with the role of Support Agency as set forth in the  
16 NCP. DEQ may elect for any reason to ask EPA to assume Lead Agency responsibility for any upland  
17 source control, which shall in no event be within the scope of this Order. EPA has the lead  
18 responsibility for conducting in-water work, including coordination of EPA's lead work with DEQ's  
19 source identification and source control activities. DEQ is the Support Agency for EPA's in-water  
20 work, consistent with the role of Support Agency as set forth in the NCP.

21           3.       Based on site assessment activities conducted by EPA in the Assessment Area,  
22 contaminants found in the Assessment Area include, but are not limited to, polychlorinated biphenyls  
23 (PCBs), polycyclic aromatic hydrocarbons (PAHs), polychlorinated dibenzo-dioxins and furans

1 (PCDD/PCDF), total petroleum hydrocarbons (TPHs), semi-volatile organic compounds (SVOCs),  
2 dichloro-diphenyl-trichloroethane (DDT) and other pesticides, herbicides, tributyl tin, mercury and other  
3 metals, and phthalates. The Site has been the subject of several studies by government and private  
4 entities. The Site has also been subject to historic dredging activities for many years. Sources of  
5 releases to the Site include releases over a long history of commercial shipping activities, releases from  
6 industrial and commercial operations, sewer outfalls, urban storm runoff, and agricultural runoff.

7 4. The Site has been listed on the National Priorities List pursuant to Section 105 of  
8 CERCLA, 42 U.S.C. 9605, at 65 Fed. Reg. 75179-01, December 1, 2000.

9 5. Respondent ATOFINA Chemicals, Inc. is a Pennsylvania Corporation doing  
10 business in the state of Oregon, primarily engaged in chemicals manufacturing. Respondent Chevron  
11 U.S.A. Inc. is a Pennsylvania Corporation doing business in the state of Oregon, primarily engaged in  
12 petroleum product production and distribution. Respondent Gunderson, Inc. is an Oregon Corporation  
13 primarily engaged in rail car and barge manufacturing. Respondent Northwest Natural Gas is an Oregon  
14 Corporation primarily engaged in the distribution of natural gas. Respondent Time Oil Co. is a  
15 Washington Corporation doing business in the state of Oregon, primarily engaged in retail petroleum  
16 distribution. Respondent Tosco Corporation is a Nevada Corporation doing business in the state of  
17 Oregon, primarily engaged in oil refining and petroleum product distribution and sales. Respondent  
18 Union Pacific Railroad is a Delaware Corporation doing business in the state of Oregon, primarily  
19 engaged in railroad transportation. Respondent Port of Portland is a public port duly organized under  
20 Oregon law. Respondent City of Portland is the most populous municipality in the state of Oregon.

21 6. EPA has not yet performed a potentially responsible party (PRP) search for the  
22 Site. Additional parties may be identified as potentially liable for releases and contamination at the Site.

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1 **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

2 EPA makes the following Conclusions of Law and Determinations which Respondents  
3 neither admit nor deny.

4 1. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §  
5 9601(9), and includes onshore facilities, offshore facilities, and inland waters of the United States and  
6 navigable waters, as defined in Sections 311(a)(10), (11) and (16) of CWA, 33 U.S.C. § 1321(a), and  
7 Sections 1001(24) and (21) of OPA, 33 U.S.C. §2701(24) and (21).

8 2. Wastes and constituents thereof at the Site, as identified in the preceding Section,  
9 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or  
10 constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public  
11 health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). TPHs at the Site, as  
12 identified in the preceding Section, are from discharges of oil, as defined in Sections 311(a)(1) and (2)  
13 of CWA, 33 U.S.C. § 1321(a)(1) and (2), and Sections 1001(23) and (7) of OPA, 33 U.S.C. §2701(23)  
14 and (7).

15 3. The presence of hazardous substances at the Site or the past, present, or potential  
16 migration of hazardous substances currently located at or emanating from the Site, constitute actual  
17 and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). The  
18 presence of actual or threatened discharges of oil at the Site from vessels and/or facilities in violation of  
19 Section 311(b) of CWA, 33 U.S.C. § 1321(b), may be an imminent and substantial threat to the public  
20 health or welfare of the United States, including fish, shellfish, wildlife, public and private property,  
21 shorelines, beaches, habitat, and/or other living and nonliving natural resources under the jurisdiction or  
22 control of the United States.

23 4. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42

1 U.S.C. § 9601(21), and/or Section 311(a)(7) of CWA, 33 U.S.C. § 1321(a)(7), and Section 1001(27) of  
2 OPA, 33 U.S.C. § 2701(27).

3 5. Each Respondent is a responsible party under Sections 104, 106, 107, and 122 of  
4 CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, and 9622. In lieu of issuing an order to compel Respondents  
5 to conduct the RI/FS, or seeking reimbursement from Respondents for EPA's conduct of the RI/FS,  
6 EPA has entered into this Order through which Respondents have agreed to conduct the RI/FS.

7 6. The actions required by this Consent Order are necessary to protect the public  
8 health and welfare and the environment, are in the public interest, are consistent with CERCLA and the  
9 NCP, 42 U.S.C. §§ 9604(a)(1), will expedite effective remedial action and minimize litigation, 42  
10 U.S.C. § 9622(a), and are consistent with Section 311 of CWA, OPA., and regulations thereunder.

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## VII. WORK TO BE PERFORMED

13 1. All work performed under this Consent Order shall be under the direction and  
14 supervision of qualified personnel. Within thirty (30) days of the effective date of this Order, and before  
15 the work outlined below begins, Respondents shall notify EPA in writing, of the names, titles, and  
16 qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be  
17 used in carrying out such work. The qualifications of the persons undertaking the work for Respondents  
18 shall be subject to EPA review, for verification that such persons meet minimum technical background  
19 and experience requirements.

20 2. This Order is contingent on Respondents' demonstration to EPA's satisfaction  
21 that Respondents are qualified to perform properly and promptly the actions set forth in this Consent  
22 Order. If EPA disapproves, in writing, of any person(s)' technical qualifications Respondents shall  
23 notify EPA of the identity and qualifications of the replacement(s) within thirty (30) days of the written



1 notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this  
2 Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from  
3 Respondents. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes  
4 or additions in the personnel used to carry out such work, providing their names, titles, and  
5 qualifications. EPA shall have the same right to approve changes and additions to personnel as they  
6 have hereunder regarding the initial notification.

7           3. Respondents shall conduct activities and submit deliverables as provided in the  
8 attached SOW. All such work shall be conducted in accordance with CERCLA, the NCP, as now or  
9 hereafter amended, and EPA guidance including, but not limited to, the "Interim Final Guidance for  
10 Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive #  
11 9355.3-01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive # 9285.7-05) and  
12 guidance referenced therein, and guidance referenced in the SOW, as may be amended or modified by  
13 EPA. The general activities that Respondents are required to perform are identified below, followed by  
14 a list of deliverables. The tasks that Respondents must perform are described more fully in the SOW.

15           4. For the purposes of this Order, day means calendar day unless otherwise noted in  
16 this Order. In addition, all deliverables, including progress reports, to be submitted to EPA pursuant to  
17 this Consent Order shall also be submitted to the Designated Project Coordinators listed in Section XV  
18 of this Order.

19           A. Task 1: Shared Server. Within ninety (90) days of the effective date of this Order,  
20 Respondents shall develop a shared server as described in the attached SOW to facilitate project  
21 management.

22           B. Task 2: Scoping. EPA has determined the preliminary Site-specific objectives of  
23 the RI/FS and has devised a general management approach for the Site as set forth in the attached SOW.

1 Respondents shall conduct the remainder of scoping activities as described in the SOW and referenced  
2 guidance. Within sixty (60) days of the effective date of this Order, Respondents shall meet with EPA  
3 and DEQ to determine the most efficient manner for understanding and incorporating EPA and DEQ  
4 upland information into the scoping task, and shall document conclusions reached during this meeting in  
5 a technical memorandum. Within two hundred ten (210) days of the effective date of this Order,  
6 Respondents shall gather, evaluate, and present the existing Site information and data as described in the  
7 SOW. During, and at the conclusion of project scoping, Respondents shall submit the following  
8 deliverables to EPA for review and approval:

9 i. Site Background

10 a. Within ninety (90) days of the effective date of this Order, Respondents  
11 shall submit a proposal for design of the Site relational database to EPA. If EPA disapproves of or  
12 requires revisions to the proposal for the Site relational database, in whole or in part, Respondents shall  
13 amend and submit a revised proposal for design of the Site relational database to EPA which is  
14 responsive to the directions in all EPA comments, within sixty (60) days of receiving EPA's comments.

15 b. Within ninety (90) days of the effective date of this Order, Respondents  
16 shall submit Data Quality Objectives to EPA which specify the usefulness of existing data. If EPA  
17 disapproves of or requires revisions to the Data Quality Objectives, in whole or in part, Respondents  
18 shall amend and submit the revised Data Quality Objectives to EPA which are responsive to the  
19 directions in all EPA comments, within sixty (60) days of receiving EPA's comments.

20 c. Within two hundred ten (210) days of the effective date of this Order, or  
21 within sixty (60) days of receiving EPA's comments on the design of the Site relational database,  
22 whichever is later, Respondents shall complete the Site relational database. If EPA disapproves of or  
23 requires revisions to the Site relational database, in whole or in part, Respondents shall revise the Site

1 relational database in a manner responsive to the directions of EPA, within thirty (30) days of receiving  
2 EPA's comments. Within one hundred fifty (150) days of Respondents' receipt of a memorandum from  
3 EPA describing the requirements of the cultural resources analysis, or such longer time for submittal as  
4 EPA may determine, Respondents shall submit this analysis.

5 d. Within two hundred ten (210) days of the effective date of this Order,  
6 Respondents shall construct and complete a table that identifies data gaps, lists the preferred method of  
7 filling those gaps, and specifically addresses how additional data will be used. The table shall include  
8 an analysis identifying additional information and data that will be required to complete the baseline  
9 human health and ecological risk assessments, and to identify and screen remedial action alternatives. If  
10 EPA disapproves of or requires revisions to the table, in whole or in part, Respondents shall amend and  
11 submit a revised table to EPA which is responsive to the directions in all EPA comments, within thirty  
12 (30) days of receiving EPA's comments.

13 e. Within ninety (90) days of the effective date of this Order, Respondents  
14 shall conduct a Site visit by boat, document collected information in a trip report primarily consisting of  
15 a narrated video, and submit a Site visit trip report to EPA. If EPA disapproves of or requires revisions  
16 to the trip report, in whole or in part, Respondents shall amend and submit the revised trip report to EPA  
17 which is responsive to the directions in all EPA comments, within sixty (60) days of receiving EPA's  
18 comments.

19 ii. Project Planning.

20 a. Within one hundred twenty (120) days of the effective date of this Order,  
21 Respondents shall meet with EPA and submit a draft risk assessment scoping memorandum that  
22 includes preliminary analytical concentration goals described in the SOW. If EPA disapproves of or  
23 requires revisions to the memorandum, in whole or in part, Respondents shall amend and submit the

1 revised memorandum to EPA which is responsive to the directions in all EPA comments, within thirty  
2 (30) days of receiving EPA's comments.

3           b.       Within two hundred ten (210) days of the effective date of this Order,  
4 Respondents shall submit and/or complete deliverables and/or work products described in the attached  
5 Stipulated Agreement. If EPA disapproves of or requires revisions to any deliverable or work product  
6 described in the Stipulated Agreement, in whole or in part, Respondents shall amend and submit a  
7 revised deliverable or work product to EPA which is responsive to the directions in all EPA comments,  
8 within thirty (30) days of receiving EPA's comments.

9           c.       Within one hundred fifty (150) days of the effective date of this Order,  
10 Respondents shall submit a preliminary conceptual Site model (CSM) to EPA. If EPA disapproves of or  
11 requires revisions to the preliminary CSM, in whole or in part, Respondents shall amend and submit the  
12 revised preliminary CSM to EPA which is responsive to the directions in all EPA comments, within  
13 thirty (30) days of receiving EPA's comments.

14           d.       Within two hundred ten (210) days of the effective date of this Order,  
15 Respondents shall submit a draft technical memorandum to EPA identifying potential criteria for  
16 identification of candidate early action areas, and which then uses these criteria to identify areas that  
17 may be candidates for early action. If EPA disapproves of or requires revisions to the memorandum, in  
18 whole or in part, Respondents shall amend and submit a memorandum to EPA which is responsive to the  
19 directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

20           e.       Within two hundred ten (210) days of the effective date of this Order,  
21 Respondents shall submit draft technical memoranda to EPA that identifies preliminary RAOs, describes  
22 the process needed to identify and obtain disposal site options for contaminated sediment, identifies  
23 potential sources of sediment capping materials and outlines testing requirements needed to evaluate the

1 acceptability of the material, and identifies the data needed to evaluate natural attenuation. If EPA  
2 disapproves of or requires revisions to any one or more of these memoranda, in whole or in part,  
3 Respondents shall amend and submit a revised memorandum to EPA which is responsive to the  
4 directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

5 f. Within two hundred ten (210) days of the effective date of this Order,  
6 Respondents shall submit a draft RI/FS work plan for the Initial Study Area (ISA) and adjacent areas as  
7 these areas are described in the SOW to EPA, which shall document the decisions and evaluations  
8 completed during the scoping process. If EPA disapproves of or requires revisions to the draft RI/FS  
9 work plan, in whole or in part, Respondents shall amend and submit a revised work plan to EPA which  
10 is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's  
11 comments.

12 g. Within two hundred ten (210) days of the effective date of this Order,  
13 Respondents shall submit the sampling & analysis plan (SAP) to EPA. This plan shall consist of a field  
14 sampling plan (FSP) and a quality assurance project plan (QAPP), as described in the SOW and  
15 applicable guidance. If EPA disapproves of or requires revisions to any of these plans, in whole or in  
16 part, Respondents shall amend and submit a revised plans to EPA which are responsive to the directions  
17 in all EPA comments, within thirty (30) days of receiving EPA's comments.

18 h. Within two hundred ten (210) days of the effective date of this Order,  
19 Respondents shall submit a project management plan, a data management plan, and a site health &  
20 safety plan to EPA, as described in the SOW. If EPA disapproves of or requires revisions to any of  
21 these plans, in whole or in part, Respondents shall amend and submit revised plans to EPA which are  
22 responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

23 iii. Following approval or modification by EPA of deliverables submitted by

1 Respondents, such deliverables shall be incorporated by reference herein.

2 C. Task 3: Community Relations Plan. EPA will prepare an in-water Community  
3 Relations/Public Participation Plan, in accordance with EPA guidance and the NCP. Respondents shall  
4 provide information supporting EPA's in-water community relations programs. (See SOW for Task 4.)

5 D. Task 5: Site Characterization. Following EPA approval or modification of the  
6 RI/FS work plan described in subparagraph B. Task 2.ii.f, above, and the SAP, or following EPA  
7 approval or modification of any required addenda for these plans, Respondents shall implement the  
8 provisions of these plans to characterize the Site. Respondents shall complete Site characterization  
9 within twelve (12) months of EPA approval or modification of the RI/FS work plan for the ISA and  
10 adjacent areas, or in accordance with the approved project schedule. Respondents shall provide EPA  
11 with analytical data within sixty (60) days of each sampling activity, in an electronic format showing the  
12 location, medium, and results. Respondents shall notify EPA in writing within seven (7) days of  
13 completion of field activities. During Site characterization, Respondents shall provide EPA with the  
14 following deliverables, as described in the SOW and/or work plan.

15 i. If EPA determines, or Respondents propose and EPA approves the proposal that  
16 modeling is appropriate, within sixty (60) days of approval of the RI/FS work plan described in  
17 subparagraph B. Task 2.ii.f, above, Respondents shall submit a technical memorandum on modeling of  
18 Site characteristics, as described in the SOW. If EPA disapproves of or requires revisions to the technical  
19 memorandum on modeling of Site characteristics, in whole or in part, Respondents shall amend and  
20 submit a revised technical memorandum on modeling of Site characteristics to EPA which is responsive  
21 to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

22 ii. Within one hundred twenty (120) days after completion of field sampling and  
23 analysis, as specified in the SOW, for the RI/FS work plan described in subparagraph B. Task 2.ii.f,

1 above, or as may be required for subsequent work plan addenda, Respondents shall submit a Site  
2 characterization summary to EPA. If EPA disapproves of or requires revisions to the Site  
3 characterization summary, in whole or in part, Respondents shall amend and submit a revised Site  
4 characterization summary to EPA which is responsive to the directions in all EPA comments, within  
5 thirty (30) days of receiving EPA's comments.

6 E. Draft Remedial Investigation Report. Within one hundred twenty (120) days after  
7 completion of field sampling and analysis, as specified in the SOW, and after completion of work set  
8 forth in the RI/FS work plan described in subparagraph B. Task 2.ii.f, above, and any subsequent  
9 addenda as determined to be necessary by EPA, Respondents shall submit a draft remedial investigation  
10 report (RI report) consistent with the SOW, work plans, and SAP. If EPA disapproves of or requires  
11 revisions to the draft RI report, in whole or in part, Respondents shall amend and submit a revised RI  
12 report to EPA which is responsive to the directions in all EPA comments, within thirty (30) days of  
13 receiving EPA's comments.

14 F. Task 6: Treatability Studies. Respondents shall conduct treatability studies,  
15 except where Respondents can demonstrate to EPA's satisfaction that they are not needed. Major  
16 components of the treatability studies include determination of the need for, and scope of, studies, the  
17 design of the studies, and the completion of the studies, as described in the SOW. During treatability  
18 studies, Respondents shall submit the following deliverables to EPA:

19 i. An identification of candidate technologies memorandum shall be submitted  
20 within sixty (60) days of receipt of EPA's written confirmation notice that treatability studies are  
21 required. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate  
22 technologies, in whole or in part, Respondents shall amend and submit a revised technical memorandum  
23 identifying candidate technologies to EPA which is responsive to the directions in all EPA comments,

1 within thirty (30) days of receiving EPA's comments.

2 ii. If EPA determines that treatability testing is required, within ninety (90) days of  
3 receipt of EPA's written confirmation notice that treatability studies are required or such longer time as  
4 EPA may specify, Respondents shall submit a treatability testing statement of work. If EPA disapproves  
5 of or requires revisions to the treatability testing statement of work, in whole or in part, Respondents shall  
6 amend and submit a revised treatability testing statement of work to EPA which is responsive to the  
7 directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

8 iii. Within sixty (60) days of receipt of EPA's written comments on the treatability  
9 testing statement of work, Respondents shall submit a treatability testing work plan, including a schedule  
10 to EPA. If EPA disapproves of or requires revisions to the treatability testing work plan, in whole or in  
11 part, Respondents shall amend and submit a revised Treatability Testing Work Plan to EPA which is  
12 responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

13 iv. Within sixty (60) days of the identification of the need for a separate or revised  
14 QAPP or FSP, Respondents shall submit a treatability study SAP to EPA. If EPA disapproves of or  
15 requires revisions to the treatability study SAP, in whole or in part, Respondents shall amend and submit  
16 a revised treatability study SAP to EPA which is responsive to the directions in all EPA comments,  
17 within thirty (30) days of receiving EPA's comments.

18 v. Within sixty (60) days of the identification of the need for a revised health &  
19 safety plan, Respondents shall submit a treatability study Site health & safety plan to EPA.

20 vi. Within one hundred twenty (120) days of completion of any treatability testing,  
21 Respondents shall submit a treatability study evaluation report as provided in the SOW and/or work plan  
22 to EPA. If EPA disapproves of or requires revisions to the treatability study report, in whole or in part,  
23 Respondents shall amend and submit a Revised treatability study report to EPA which is responsive to



1 the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

2 G. Task 7: Development and Screening of Remedial Alternatives. Respondents shall  
3 develop an appropriate range of waste management options that will be evaluated through the  
4 development and screening of alternatives, as provided in the SOW. During the development and  
5 screening of alternatives, Respondents shall submit the following deliverables to EPA:

6 i. Within ninety (90) days after receipt of EPA's comments on the draft RI report,  
7 Respondents shall refine and document Site-specific RAOs using data collected during site  
8 characterization, and using results of the baseline human health and ecological risk assessments; if the  
9 risk assessments are not completed and approved by EPA by this time, Respondents shall use whatever  
10 draft baseline risk assessment information and data has been generated by the time refined Site-specific  
11 RAOs are due to EPA. If the refined RAOs are submitted to EPA prior to approval of the baseline risk  
12 assessment reports, after thirty (30) days of such written EPA approval of these reports, Respondents  
13 shall submit revised Site-specific RAOs. If EPA disapproves of or requires revisions to the Site-specific  
14 RAOs, in whole or in part, Respondents shall amend and submit revised Site-specific RAOs to EPA  
15 which are responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's  
16 comments.

17 ii. Within ninety (90) days after receipt of EPA's comments on the Site-specific  
18 RAOs, Respondents shall submit a memorandum summarizing the development and screening of  
19 remedial alternatives, including an alternatives array document as described in the SOW, to EPA. If EPA  
20 disapproves of or requires revisions to the memorandum summarizing the development and screening of  
21 remedial alternatives, in whole or in part, Respondents shall amend and submit a revised memorandum  
22 summarizing the development and screening of remedial alternatives to EPA which is responsive to the  
23 directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

1 H. Task 8: Detailed Analysis of Remedial Alternatives. Respondents shall conduct a  
2 detailed analysis of remedial alternatives, as described in the SOW. During the detailed analysis of  
3 alternatives, Respondents shall provide the following to EPA:

4 i. Within one hundred twenty (120) days after receipt of EPA's comments on the  
5 memorandum summarizing the development and screening of remedial alternatives, Respondents shall  
6 submit a report on comparative analyses to EPA summarizing the results of the comparative analyses  
7 performed among the remedial alternatives. If EPA disapproves of or requires revisions to the report on  
8 comparative analyses, Respondents shall amend and submit a revised report on comparative analyses to  
9 EPA which is responsive to the directions in all EPA comments, within thirty (30) days of receiving  
10 EPA's comments. Within two (2) weeks of submitting the original report on comparative analyses,  
11 Respondents shall make a presentation to EPA during which Respondents shall summarize the findings  
12 of the RI and RAOs, and present the results of the nine criteria evaluation and comparative analyses, as  
13 described in the SOW.

14 ii. Within ninety (90) days after receipt of EPA's comments on the report on  
15 comparative analyses, Respondents shall submit a draft FS report which reflects the data collected during  
16 site characterization, the Site-specific RAOs, and the results of the baseline human health and ecological  
17 risk assessments. Respondents shall refer to Table 6-5 of the RI/FS Guidance for report content and  
18 format. If EPA disapproves of or requires revisions to the draft FS report, in whole or in part,  
19 Respondents shall amend and submit a revised FS report to EPA which is responsive to the directions in  
20 all EPA comments, within thirty (30) days of receiving EPA's comments. The report, as amended, and  
21 the administrative record, shall provide the basis for the Proposed Plan under CERCLA §§ 113(k) and  
22 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

23 iii. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates

1 of the risk to the public and environment that are expected to remain after a particular remedial  
2 alternative has been completed.

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#### **VIII. BASELINE RISK ASSESSMENTS**

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1. The baseline risk assessments shall be performed as set forth in the SOW.

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2. If EPA does not approve of Respondents' qualifications to conduct the baseline

7 risk assessments, EPA will determine the appropriate means of conducting the baseline risk assessments.

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#### **IX. APPROVALS/MODIFICATIONS**

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1. EPA reserves the right to comment on, modify, and direct changes for all

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deliverables in writing. EPA's review will include consultation with DEQ, Tribes, and Natural

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Resource Trustees. EPA will meet with the Respondents in an effort to resolve disputes. At EPA's

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discretion, Respondents must fully correct all deficiencies and incorporate and integrate all information

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and comments supplied by EPA either in subsequent or resubmitted deliverables within a time frame

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specified by EPA. EPA will consider input from Respondents in specifying such timeframes.

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2. Respondents shall not proceed further with any dependent subsequent activities or

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tasks until Respondents receive EPA approval for all deliverables identified in Section VII.4, including

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the following deliverables: draft RI/FS work plan described in subparagraph B. Task 2.ii.f, above, draft

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RI report, treatability testing work plan, draft FS report, and those deliverables identified by EPA related

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to the baseline risk assessments. While awaiting EPA approval on these deliverables, Respondents shall

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proceed with all other tasks and activities which may be conducted independently of these deliverables,

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in accordance with the schedule set forth in this Consent Order.

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3. For all remaining deliverables not enumerated in Section VII.4 above,

1 Respondents shall proceed with all subsequent tasks, activities, and deliverables. EPA reserves the right  
2 to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or  
3 deliverable at any point during the RI/FS.

4           4.       If Respondents amend or revise a report, plan, or other submittal in response to  
5 EPA comments, and EPA subsequently disapproves of the revised submittal, or if such subsequent  
6 submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek penalties,  
7 perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP,  
8 and seek reimbursement from Respondents for costs, and/or seek any other appropriate relief.

9           5.       If EPA takes over some of the tasks, but not the preparation of the RI/FS,  
10 Respondents shall incorporate and integrate information supplied by EPA into the final RI/FS report.

11           6.       Neither failure of EPA to expressly approve or disapprove of Respondents'  
12 submissions within any specified time period(s), nor the absence of comments, shall be construed as  
13 approval by EPA. EPA will provide approvals and disapprovals of deliverables required pursuant to this  
14 Order in writing.

15           7.       Respondents shall, prior to any off-Site shipment of hazardous substances from  
16 the Site to an out-of-state waste management facility, provide written notification to the appropriate state  
17 environmental official in the receiving state and to EPA's Designated Project Coordinators of such  
18 shipment of hazardous substances. However, the notification of shipments shall not apply to any such  
19 off-Site shipments when the total volume of such shipments will not exceed ten (10) cubic yards. The  
20 notification shall be in writing, and shall include the following information, where available: (1) the  
21 name and location of the facility to which the hazardous substances are to be shipped; (2) the type and  
22 quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the  
23 hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state

1 of major changes in the shipment plan, such as a decision to ship the hazardous substances to another  
2 facility within the same state, or to a facility in another state.

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#### **X. MODIFICATION OF THE WORK PLAN**

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1. If at any time during the RI/FS process, Respondents identify a need for additional data or need for a change in any element of the work plan, a memorandum documenting the need for additional data or other change shall be submitted to the EPA Project Coordinator within twenty (20) days of identification. EPA, in its discretion, will determine whether the additional data will be collected by Respondents or the requested change made and whether it will be incorporated into reports and deliverables.

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2. Upon discovery of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA immediately. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. If EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the work plans, in addition to EPA's authorities in the NCP, EPA may modify or amend the work plans consistent with this Order, in writing. Respondents shall perform the work plans as modified or amended.

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3. EPA may determine that in addition to tasks defined in the initially approved work plans, other additional work may be necessary to accomplish the objectives of the RI/FS. EPA may require Respondents to perform these response actions in addition to those required by this Order. Respondents shall confirm their willingness to perform the additional work, in writing, to EPA within seven (7) days of receipt of the EPA request or Respondents shall invoke dispute resolution. Subject to

1 EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA determines  
2 are necessary. The additional work shall be completed according to the standards, specifications, and  
3 schedule set forth or approved by EPA in a written modification to the work plans or written work plan  
4 addenda. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from  
5 Respondents, and/or to seek any other appropriate relief.

6 4. If EPA determines that conditions at the Site are creating or have the potential to  
7 create a danger to human health or welfare on-site or in the surrounding area or to the environment, EPA  
8 may order Respondents to stop further implementation of this Order for such period of time in the  
9 judgment of EPA is needed to abate the danger.

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## **XI. QUALITY ASSURANCE**

12 1. Respondents shall assure that work performed, samples taken, and analyses  
13 conducted conform to the requirements of the SOW, QAPP, and guidance identified therein.  
14 Respondents shall assure that field personnel used by Respondents are properly trained in the use of  
15 field equipment and in chain-of-custody procedures.

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## **XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION AND ADMINISTRATIVE RECORD**

21 1. EPA retains the responsibilities for release to the public of the RI/FS report and  
22 the preparation and release of the Proposed Plan and the Record of Decision, in accordance with  
23 CERCLA and the NCP.

23 2. EPA shall provide Respondents with the Proposed Plan and Record of Decision.

24 3. EPA will determine the contents of its administrative record file for selection of

1 the remedial action. Respondents must submit documents developed during the course of the RI/FS to  
2 EPA upon which selection of the response action may be based. If requested by EPA, Respondents shall  
3 provide copies of plans, task memoranda, including documentation of field modifications,  
4 recommendations for further action, quality assurance memoranda and audits, validated data, raw data,  
5 field notes, laboratory analytical reports, and other reports, concerning the implementation of this Order.  
6 Respondents must additionally submit any previous studies conducted under state, local, or other  
7 federal authorities relating to selection of the response action, and all communications between  
8 Respondents and state, local, or other federal authorities concerning selection of the response action. At  
9 EPA's discretion, Respondents may establish a community information repository at or near the Site, to  
10 house one copy of the administrative record.

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### 12 **XIII. PROGRESS REPORTS AND MEETINGS**

13 1. Respondents shall make presentations at, and participate in, meetings at the  
14 request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of  
15 the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will  
16 be scheduled at EPA discretion.

17 2. In addition to the deliverables set forth in this Order, Respondents shall submit  
18 monthly progress reports to EPA by the tenth (10th) day of each month. At a minimum, with respect to  
19 the preceding month, these progress reports shall: (1) describe the actions which have been taken to  
20 comply with this Consent Order during that month; (2) include all results of sampling and tests and all  
21 other data received by Respondents that have been subjected to quality assurance pursuant to the QAPP;  
22 (3) describe work planned for the next two (2) months with schedules relating such work to the overall  
23 project schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated

1 problems, any actual or anticipated delays, and solutions developed and implemented to address any  
2 actual or anticipated problems or delays.

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4 **XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY**

5 1. All results of sampling, tests, modeling, or other data generated by Respondents,  
6 or on Respondents' behalf, for the implementation of this Consent Order, shall be submitted to EPA  
7 monthly as described in the preceding section of this Order. Raw data shall be submitted to EPA upon  
8 request. EPA will make validated data generated by EPA or DEQ available to Respondents unless it is  
9 exempt from disclosure by federal or state law or regulation. If there is a discrepancy between EPA's  
10 QAPP data and the Respondents' QAPP data, EPA will, upon the request of Respondents, make the raw  
11 data that was subject to the quality assurance resulting in such a discrepancy available to Respondents.

12 2. Respondents shall orally notify EPA at least fifteen (15) days prior to conducting  
13 significant field events as described in the SOW, work plans, or SAPs. At EPA's oral or written request,  
14 or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken  
15 by EPA (and/or its authorized representatives) of any samples collected by Respondents in implementing  
16 this Order. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

17 3. At all reasonable times EPA, its authorized representatives, DEQ and its  
18 authorized representatives, and designated representatives of Tribes and Natural Resource Trustees  
19 accompanied by EPA shall have the authority to enter and freely move about all property over which  
20 Respondents have possession or control at the Site where work, if any, is to be carried out pursuant to  
21 this Order. EPA and DEQ and their authorized representatives shall also have full access for the  
22 purposes of inspecting conditions, activities, the results of activities, records, operating logs, and  
23 contracts related to this Order; reviewing the progress of the Respondents in carrying out the terms of



1 this Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera,  
2 sound recording device, or other documentary type equipment to record matters related to this Order;  
3 and verifying the data developed pursuant to this Order and submitted to EPA by Respondents.  
4 Respondents shall allow EPA and DEQ and their authorized representatives to inspect and copy all  
5 records, files, photographs, documents, sampling and monitoring data, and other writings related to work  
6 undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting the  
7 United States' right of entry or inspection authority under federal law. Nothing in this Section shall alter  
8 existing access provisions within voluntary agreements between any Respondent and DEQ, which  
9 provisions shall continue to govern access for DEQ as Lead Agency for work conducted under those  
10 voluntary agreements and shall not govern access for DEQ as a Support Agency under this Order. EPA  
11 shall make reasonable efforts to avoid interfering with Respondents' business activities when present at  
12 Respondents' properties. All parties with access to the Site under this paragraph shall comply with all  
13 approved Health and Safety Plans applicable to the property, as well as applicable laws and regulations.  
14 Tribes and their authorized representatives shall be permitted reasonable access to Respondents'  
15 properties at the Site without EPA accompaniment as described in an approved work plan for the  
16 Cultural Resource Analysis described in the SOW.

17 4. Respondents may assert a claim of business confidentiality covering part or all of  
18 the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. 2.203,  
19 provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim  
20 shall be asserted in the manner described by 40 C.F.R. 2.203(b), and substantiated at the time the claim  
21 is made. Information determined to be confidential by EPA will be given the protection specified in  
22 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be  
23 made available to the public by EPA or DEQ without further notice to Respondents. Respondents agree

1 not to assert business confidentiality claims with respect to any data related to Site conditions, sampling,  
2 or monitoring.

3           5. By entering into this Order, Respondents waive any objections in any proceeding  
4 by EPA to any data gathered, generated, or evaluated by EPA, DEQ, or Respondents in the performance  
5 or oversight of the work that has been verified according to the quality assurance/quality control  
6 (QA/QC) procedures required by the Consent Order. If Respondents object to any other data relating to  
7 the RI/FS, Respondents shall submit a report to EPA that identifies and explains its objections, describes  
8 the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report  
9 must be submitted to EPA within thirty (30) days of the monthly progress report containing the data.

10           6. If the Site, or any off-Site area that is to be used for access for purposes of  
11 implementing this Order, is owned in whole or in part by parties other than those bound by this Consent  
12 Order, Respondents will obtain, or use best efforts to obtain Site access agreements from the present  
13 owner(s) within ninety (90) days from the date EPA determines that access is needed. Such agreements  
14 shall provide access for EPA, its contractors and oversight officials, DEQ and its contractors, the  
15 designated representatives of the Tribes and Natural Resource Trustees accompanied by EPA, and  
16 Respondents or their authorized representatives, and such agreements shall specify that Respondents are  
17 not EPA, DEQ's, Tribes' or Natural Resource Trustees' representative with respect to liability associated  
18 with Site activities. Copies of such agreements shall be submitted to EPA prior to Respondents' initiation  
19 of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-  
20 Site property owner, unless such owner qualifies as a potentially responsible party under Section 107(a)  
21 of CERCLA. If access agreements are not obtained within the time referenced above, Respondents shall  
22 immediately notify EPA of their failure to obtain access and EPA and Respondents will discuss a strategy  
23 for gaining access to such properties in the most expeditious and cost effective manner. EPA may obtain

1 access for Respondents or perform those tasks or activities with EPA contractors. If EPA performs those  
2 tasks or activities with EPA contractors, Respondents shall perform all other activities not requiring  
3 access to that portion of the Site, and shall reimburse EPA for all costs incurred in accordance with this  
4 Order, which are not inconsistent with the NCP in performing such activities. Respondents shall  
5 integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondents  
6 also agree to indemnify the United States as specified in Section XXIV of this Order.

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#### **XV. DESIGNATED PROJECT COORDINATORS**

9 1. Deliverables submitted under this Consent Order, shall be sent by certified mail,  
10 return receipt requested, to the following addressees or to any other addressees which EPA may designate  
11 in writing:

12

(a) five copies to EPA:  
Wallace Reid  
EPA Project Coordinator,  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, M/S ECL-115  
Seattle, WA 98101  
ph: 206-553-1728  
fax: 206-553-0124  
[reid.wallace@epa.gov]

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(b) one copy to DEQ:

23

Eric Blischke  
Oregon DEQ  
2020 SW 4th Ave. #400  
Portland, OR 97201  
ph: 503-229-5648  
fax: 503-229-6899  
[blischke.eric@deq.state.or.us]

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(c) one copy to Oregon Department of Fish & Wildlife:

1 Rick Kepler  
2 Oregon Department of Fish & Wildlife  
3 2501 SW First Ave.  
4 Portland, OR 97207  
5 ph: 503-872-5255 x.5426  
6 fax: 503-872-5269  
7 [rick.j.kepler@state.or.us]  
8

9 (d) one copy to NOAA:

10 Helen Hillman  
11 NOAA Resources Coordinator  
12 c/o EPA Region 10  
13 1200 Sixth Avenue (M/S ECL-117)  
14 Seattle, WA 98101  
15 ph: 206-553-2101  
16 fax: 206-553-0124  
17 [hillman.helen@noaa.gov]  
18

19 (e) one copy to the U.S. Department of Interior  
20 Preston Sleeper  
21 Regional Environmental Officer  
22 Pacific Northwest Region  
23 500 NE Multnomah St.  
24 Suite 356  
25 Portland, OR 97232  
26 ph: 503-321-6157  
27 fax: 503-231-2361  
28 [preston\_sleeper@ios.doi.gov]  
29

30 (f) one copy to the Confederated Tribes of the Warm Springs Reservation of Oregon

31 Brad Nye  
32 Natural Resources Department  
33 P.O. Box C  
34 Warm Springs, OR 97761  
35 ph: 541-553-2041  
36 fax: 541-553-1994  
37 [bnye@wstribes.org]  
38

39 (g) one copy to the Confederated Tribes and Bands of the Yakama Nation:

1 Lynn Hatcher  
2 Yakama Nation  
3 Fisheries Management Program  
4 P.O. Box 151  
5 4690 SR 22  
6 Toppenish, WA 98948  
7 ph: 509-865-6262  
8 fax: 509-865-6293  
9 [lynn@yakama.com]  
10

11 (h) one copy to the Confederated Tribes of the Grand Ronde Community of Oregon:

12 Kathleen Feehan  
13 Confederated Tribes of the Grand Ronde Community of Oregon  
14 47010 SW Hebo Road  
15 Grand Ronde, OR 97347  
16 ph: 503-879-2395  
17 fax: 503-879-5622  
18 [kathleen.feehan@grandronde.org]  
19

20 (i) one copy to the Confederated Tribes of the Siletz Indians:

21 Tom Downey  
22 Environmental Specialist  
23 Confederated Tribes of the Siletz Indians  
24 P.O. Box 549  
25 Siletz, OR 97380  
26 ph: 541-444-8226  
27 fax: 541-444-9688  
28 [tomd@ctsi.nsn.us]  
29

30 (j) one copy to the Confederated Tribes of the Umatilla Indian Reservation:

31 Audie Huber  
32 Confederated Tribes of the Umatilla Indian Reservation  
33 Department of Natural Resources  
34 73239 Confederated Way  
35 Pendelton, OR 97801  
36 ph: 541-966-2334  
37 fax: 503-276-3317  
38 [audiehuber@ctuir.com]  
39

1 (k) one copy to the Nez Perce Tribe:

2 Patti Howard  
3 Water Resources Division  
4 Nez Perce Tribe  
5 P.O. Box 365  
6 Lapwai, ID 83540  
7 ph: 208-843-7368  
8 fax: 208-843-7371  
9 [pattih@nezperce.org]

10  
11 (l) one copy each to Respondents' Co-Project Coordinators

12 Robert Wyatt  
13 Northwest Natural  
14 220 NW Second Avenue  
15 Portland, OR 97209  
16 ph: 503-226-4211 x5425  
17 fax: 503-273-4815  
18 [rjw@nwnatural.com]

19  
20 Trey Harbert  
21 Port of Portland  
22 P.O. Box 3529  
23 Portland, OR 97208  
24 ph: 503-944-7325  
25 fax: 503-944-7354  
26 [harbet@portptld.com]  
27

28 2. On or before the effective date of this Order, EPA and Respondents shall each  
29 designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing  
30 the implementation of this Consent Order. To the maximum extent possible, written communications  
31 between Respondents and EPA shall be directed to the Project Coordinator by mail or electronic mail,  
32 with copies to such other persons as EPA may designate.

33 3. EPA and Respondents have the right to change their respective Project  
34 Coordinator upon at least ten (10) days notice in writing prior to the change.

35 4. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial

1 Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. EPA's Project Coordinator shall  
2 have the authority consistent with the NCP, to halt any work required by this Consent Order, and to take  
3 any necessary response when he or she determines that conditions at the Site may present an immediate  
4 endangerment to public health or welfare or the environment. The absence of the EPA Project  
5 Coordinator from the Site pursuant to this Consent Order shall not be cause for the stoppage or delay of  
6 any work.

7 5. EPA shall arrange for a qualified person to assist in its oversight and review of the  
8 conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight  
9 assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify  
10 any approved deliverable.

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## 12 **XVI. OTHER APPLICABLE LAWS**

13 1. Respondents shall comply with all applicable laws and regulations in  
14 implementing this Order. No local, state, or federal permit shall be required for any portion of any  
15 action conducted entirely on-Site, including studies, where such action is selected and carried out in  
16 compliance with Section 121 of CERCLA, 42 U.S.C. § 9621.

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## 18 **XVII. RECORD PRESERVATION**

19 1. All records and documents in Respondents', their employees', contractors',  
20 consultants', agents', accountants', or attorneys' possession, whether they have been submitted to EPA  
21 or not, that concern the implementation of this Order, including those documents relevant to the  
22 performance of Task 2.a. of the SOW (Data Compilation/Site Background), and/or those documents  
23 related to the release or threatened release of hazardous substances, pollutants, or contaminants to the

1 sediments in the Lower Willamette River, shall be preserved during the conduct of this Consent Order  
2 and for a minimum of ten (10) years after the completion of remedial action at the Site, unless  
3 permission has been sought and obtained in writing from EPA and DEQ prior to destruction of such  
4 documents. Respondents reserve the right to claim the attorney-client privilege and/or attorney work  
5 product immunity in accordance with FRCP 26, for such documents, and EPA reserves the right to  
6 challenge any such claims by Respondents. After this 10-year period, Respondents shall notify EPA and  
7 DEQ at least ninety (90) days before the documents are scheduled to be destroyed. If EPA or DEQ  
8 requests that the documents be saved, Respondents shall, at no cost to EPA or DEQ, give the requesting  
9 agency the documents or copies of the documents.

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#### **XVIII. DISPUTE RESOLUTION**

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1. Any disputes concerning activities or deliverables required under this Order may be resolved as follows: If Respondents object to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondents shall notify the EPA Project Coordinator in writing of their objection(s) within fourteen (14) days of receipt of the disapproval notice or requirement. Respondents' written objection(s) shall define the dispute, state the basis of Respondents' objection(s), and be sent certified mail, return receipt requested. EPA and Respondents then have an additional fourteen (14) days from Respondents' receipt of the return receipt to reach agreement. If an agreement is not reached within fourteen (14) days, Respondents may request a determination by EPA's Environmental Cleanup Office (ECL) Director. The ECL Director's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct



1 the work itself, to seek reimbursement from Respondents, to seek enforcement of the decision, to seek  
2 penalties, and/or to seek any other appropriate relief.

3           2. Respondents are not relieved of any obligations to perform and conduct activities  
4 and submit deliverables on the schedule set forth in the SOW or work plan, while a matter is pending in  
5 dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this  
6 Order.

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### 8                                   **XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

9           1. Unless there is a Force Majeure event as defined in Section XX below, for each  
10 day that Respondents fail to complete a deliverable in a timely manner or fail to produce a deliverable of  
11 acceptable quality, or otherwise fail to perform in accordance with the requirements of this Order,  
12 Respondents shall be liable for stipulated penalties. DEQ may identify a violation of the Order and  
13 recommend to EPA that EPA impose stipulated penalties for such violation. Penalties begin to accrue  
14 on the day that performance is due or a violation occurs, and extend through the period of correction.  
15 Where a revised submission by Respondents is required, stipulated penalties shall continue to accrue  
16 until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not  
17 based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. EPA  
18 may, at its discretion, waive imposition of stipulated penalties if it determines that Respondents have  
19 attempted in good faith to comply with this Order, or have timely cured defects in initial submissions.  
20 Payment shall be due within thirty (30) days of receipt of a demand letter from EPA, unless otherwise  
21 agreed to by EPA.

22           2. Unless EPA has agreed to a longer period of time for payment pursuant to  
23 paragraph 1, above, Respondents shall pay interest on the unpaid balance, which shall begin to accrue at

1 the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C.  
2 § 3717. Respondents shall further pay a handling charge of one percent (1%), to be assessed at the end  
3 of each thirty-one (31) day period, and a six percent (6%) per annum penalty charge, to be assessed if  
4 the penalty is not paid in full within ninety (90) days after it is due.

5 3. Respondents shall make all payments by check to: U.S. Environmental  
6 Protection Agency, Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251.  
7 Checks should identify the name of the Site, the Site identification number, the account number and the  
8 title of this Order. A copy of the check and/or transmittal letter shall be forwarded to the EPA Project  
9 Coordinator.

10 4. For the following deliverables, stipulated penalties shall accrue in the amount of  
11 \$500 per day, per violation, for the first seven days of noncompliance; \$1,000 per day, per violation, for  
12 the 8th through 14th day of noncompliance; \$2,500 per day, per violation, for the 15th day through the  
13 30th day; and \$5,000 per day per violation for the 30th day through the 90th day.

14 a) An original and any revised deliverables and/or work products described in the  
15 Stipulation and Agreement.

16 b) An original and any revised RI/FS work plan, including addenda.

17 c) An original and any revised SAP.

18 d) An original and any revised Site health & safety plan.

19 e) An original and any revised RI report.

20 f) An original and any revised treatability statement of work.

21 g) An original and any revised treatability testing work plan.

22 h) An original and any revised treatability study sampling & analysis plan.

23 i) An original and any revised treatability study health & safety plan.

1           j)       An original and any revised risk assessment scoping memorandum; the original  
2 risk assessment scoping memorandum shall be the version submitted in response to EPA’s first round of  
3 comments on Respondents’ draft memorandum submitted to EPA pursuant to this Order within 120 days  
4 after the effective date.

5           k)       An original and any revised FS report.

6           l)       An original and any revised baseline risk assessment report.

7           5.       For the following interim deliverables, stipulated penalties shall accrue in the  
8 amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day, per violation,  
9 for the 8th through 14th day of noncompliance; \$1,500 per day, per violation, for the 15th day through  
10 the 30th day of noncompliance; and \$2,500 per day per violation for the 30th day through the 90th day  
11 of noncompliance.

12           a)       An original and any revised Data Quality Objectives submitted with the RI/FS  
13 work plan for the ISA and adjacent areas, including addenda.

14           b)       An original and any revised completed Site relational database.

15           c)       An original and any revised data gaps table submitted with the RI/FS work plan  
16 described in subparagraph B. Task 2.ii.f, above, including addenda.

17           d)       An original and any revised Site trip report submitted with the RI/FS work plan  
18 described in subparagraph B. Task 2.ii.f, above, including addenda.

19           e)       An original and any revised preliminary analytical goals submitted with the RI/FS  
20 work plan described in subparagraph B. Task 2.ii.f, above, including addenda.

21           f)       An original and any revised preliminary CSM submitted with the RI/FS work plan  
22 described in subparagraph B. Task 2.ii.f, above, including addenda.

23           g)       An original and any revised technical memorandum identifying potential criteria

1 for identification of candidate early action areas, and any deliverable using these criteria to identify areas  
2 that may be candidates for early action.

3 h) An original and any revised technical memorandum on modeling of Site  
4 characteristics submitted with the RI/FS work plan described in subparagraph B. Task 2.ii.f, above,  
5 including addenda.

6 i) An original and any revised Site characterization summary.

7 j) An original and any revised identification of candidate technologies  
8 memorandum.

9 k) An original and any revised technical memorandum identifying preliminary  
10 RAOs.

11 l) An original and any revised technical memorandum describing process(es) to  
12 identify and obtain disposal site options for contaminated sediment.

13 m) An original and any revised technical memorandum identifying potential sources  
14 of sediment capping materials and/or outlining testing requirements needed to evaluate the acceptability  
15 of any such material.

16 n) An original and any revised technical memorandum identifying the data to  
17 evaluate natural attenuation options.

18 o) An original and any revised treatability testing evaluation report.

19 p) An original and any revised treatability study evaluation report.

20 q) An original and any revised Site-specific remedial action objectives refined and  
21 documented pursuant to this Order (due ninety (90) days after Respondents' receipt of EPA's comments  
22 on the draft RI report).

23 r) Memoranda on development and preliminary screening of alternatives, assembled

1 alternatives screening results, and final screening.

2 s) Comparative analyses of remedial alternatives report.

3 t) An original and any revised cultural resource analysis.

4 6. For the monthly progress reports, stipulated penalties shall accrue in the amount  
5 of \$200 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the  
6 8th through 14th day of noncompliance; \$1,000 per day, per violation, for the 15th day through the 30th  
7 day; and \$2,000 per day, per violation, for the 30th day through the 90th day. Stipulated penalties for  
8 monthly progress reports shall not accrue during the first two hundred ten (210) days after the effective  
9 date of this Order.

10 7. Respondents may dispute EPA's right to the stated amount of penalties by  
11 invoking the dispute resolution procedures under Section XVIII herein. Penalties may, at EPA's  
12 discretion, accrue, but need not be paid, during the dispute resolution period. If Respondents do not  
13 prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the  
14 dispute, unless otherwise agreed to by EPA. If Respondents prevails upon resolution, no penalties shall  
15 be paid.

16 8. If EPA requires corrections to be reflected in the next deliverable and does not  
17 require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to  
18 accrue on the date of such decision by EPA.

19 9. The stipulated penalties provisions do not preclude EPA from pursuing any other  
20 remedies or sanctions which are available to EPA because of Respondents' failure to comply with this  
21 Consent Order, including, but not limited to, conduct of all or part of the RI/FS by EPA. Payment of  
22 stipulated penalties does not alter Respondents' obligation to complete performance under this Consent  
23 Order.

1 10. Respondents are each jointly and severally liable to comply with this Order.  
2 Failure to comply by one Respondent does not excuse performance by any other Respondents.  
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## **XX. FORCE MAJEURE**

5 1. "Force Majeure," for purposes of this Consent Order, is defined as any event  
6 arising from causes ~~entirely~~ beyond the control of Respondents and of any entity controlled by  
7 Respondents, including their contractors and subcontractors, that delays the timely performance of any  
8 obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the delay. The  
9 requirement that the Respondents exercise "best efforts to avoid the delay" includes using best efforts to  
10 anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force  
11 Majeure event (1) as it is occurring, and (2) following the potential Force Majeure event, such that the  
12 delay is minimized to the greatest extent practicable. Examples of events that are not Force Majeure  
13 events include, but are not limited to, increased costs or expenses of any work to be performed under  
14 this Order or the financial difficulty of Respondents to perform such work.

15 2. If any event occurs or has occurred that may delay the performance of any  
16 obligation under this Order, whether or not caused by a Force Majeure event, Respondents shall notify,  
17 by telephone, the EPA RPM or, in his or her absence, the ECL Director, within forty-eight (48) hours of  
18 when Respondents knew or should have known that the event might cause a delay. Within seven (7)  
19 business days thereafter, Respondents shall provide, in writing, the reasons for the delay, the anticipated  
20 duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for  
21 implementation of any measures to be taken to mitigate the effect of the delay, and a statement as to  
22 whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to  
23 public health, welfare, or the environment. Respondents shall exercise best efforts to avoid or minimize

1 any delay and any effects of a delay. Failure to comply with the above requirements shall preclude  
2 Respondents from asserting any claim of Force Majeure.

3           3.       If EPA agrees that the delay or anticipated delay is attributable to Force Majeure,  
4 the time for performance of the obligations under this Order that are directly affected by the Force  
5 Majeure event shall be extended by written agreement of the parties, for a period of time not to exceed  
6 the actual duration of the delay caused by the Force Majeure event. An extension of the time for  
7 performance of the obligation directly affected by the Force Majeure event shall not extend the time for  
8 performance of any subsequent obligation.

9           4.       If EPA does not agree that the delay or anticipated delay has been or will be  
10 caused by a Force Majeure event, or does not agree with Respondents on the length of the extension, the  
11 issue shall be subject to the dispute resolution procedures set forth in Section XVII of this Order. In any  
12 such proceeding, to qualify for a Force Majeure defense, Respondents shall have the burden of  
13 demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be  
14 caused by a Force Majeure event, that the duration of the delay was or will be warranted under the  
15 circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts  
16 to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of  
17 this Section.

18           5.       Should Respondents carry the burden set forth in the preceding paragraph, the  
19 delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

20

## 21                                   **XXI. RESERVATIONS OF RIGHTS**

22           1.       EPA reserves the right to bring an action against Respondents under Section 107  
23 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs including oversight costs, incurred by

1 the United States, and by DEQ as support agency, for activities relating to this RI/FS, at the Site that are  
2 not reimbursed by Respondents, any costs incurred if EPA performs the RI/FS or any part thereof, and  
3 any future costs incurred by the United States in connection with response activities conducted under  
4 CERCLA at the Site. Respondents reserve all rights consistent with this Order to defend against any  
5 such action. EPA will not bring an action against Respondents to recover response costs incurred prior  
6 to January 26, 2001 while this Consent Order is in effect.

7           2. EPA reserves the right to bring an action against Respondents to enforce the  
8 response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated  
9 penalties assessed pursuant to this Consent Order, and to seek penalties pursuant to Section 109 of  
10 CERCLA, 42 U.S.C. § 9609. Respondents reserve all rights consistent with this Order to defend against  
11 any such action by EPA, though Respondents waive any defenses to such actions on the basis of claim-  
12 splitting or any applicable statute of limitations or laches while this Consent Order is in effect.

13           3. EPA or Respondents' failure to specifically reserve a particular right herein shall  
14 not be construed as a waiver of that right. Except as expressly provided in this Order, each party  
15 reserves all rights and defenses it may have. Nothing in this Consent Order shall affect EPA's removal  
16 authority or EPA's response or enforcement authorities including, but not limited to, the right to seek  
17 injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

18           4. Following satisfaction of the requirements of this Consent Order, Respondents  
19 shall have resolved their liability to EPA for the work performed by Respondents pursuant to this  
20 Consent Order. Respondents are not released from liability, if any, for any response actions taken  
21 beyond the scope of this Order regarding removals, other operable units, remedial design/remedial  
22 action, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

23           5. Respondents reserve the right to claim the attorney-client privilege and/or



1 attorney work product immunity in accordance with FRCP 26, for documents, and EPA reserves the  
2 right to challenge any such claim by Respondents.

3           6. EPA recognizes that Respondents are entering into this Order notwithstanding  
4 that contamination at the Site may have been caused by entities other than Respondents. In actions  
5 concerning the Site, EPA agrees to apply the EPA Orphan Policy, Attachment C hereto.

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## **XXII. REIMBURSEMENT OF EPA RESPONSE COSTS**

8           1. Following the issuance of this Consent Order, EPA shall submit an accounting to  
9 Respondents on a periodic basis of all response and oversight costs incurred by the United States in the  
10 implementation and oversight of this Order. Such response costs may include, but are not limited to,  
11 costs incurred by the United States in overseeing Respondents' implementation of the requirements of  
12 this Consent Order and activities performed by the United States as part of this RI/FS, including any  
13 costs incurred to obtain access for Respondents pursuant to this Consent Order, in connection with  
14 preparation of the risk assessment for the site, and for community relations activities for this RI/FS.  
15 However, where consistent with any access strategy developed by the parties pursuant to Section XIV.6,  
16 EPA may, in its discretion, use its enforcement authority to obtain access and seek cost recovery from  
17 any party who denies access. Costs shall include all direct and indirect costs, including, but not limited  
18 to, time and travel costs of EPA personnel and associated indirect costs, coordination between DEQ and  
19 EPA regarding uplands source identification and control and in-water investigation, contractor costs,  
20 cooperative agreement costs, compliance monitoring, including the collection and analysis of split  
21 samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a  
22 result of this Consent Order, review and approval or disapproval of reports, and costs incurred by EPA  
23 of redoing any of Respondents' tasks. Any necessary summaries, including, but not limited to EPA's

1 certified Agency Financial Management System summary data (SCORES Reports), or such other  
2 summary as certified by EPA, shall serve as basis for payment demands. However, Respondents may  
3 review the following underlying EPA oversight cost documentation: EPA personnel time sheets, travel  
4 authorizations and vouchers; EPA contractor monthly invoices; and all applicable contract laboratory  
5 program (CLP) invoices. Costs reimbursable under this Order shall not include costs incurred prior to  
6 January 26, 2001.

7           2. Respondents shall, within 30 days of receipt of each accounting, remit a certified  
8 or cashier's check for the amount of the costs set forth in the accounting. If payment of such costs is not  
9 made within 30 days of receipt of the accounting, interest shall accrue from the date of receipt of the  
10 accounting through the date of payment. The interest rate is the rate of interest on investments for the  
11 Hazardous Substances Superfund in section 107(a) of CERCLA, compounded annually on October 1.

12           3. Checks shall be made payable to the Hazardous Substances Superfund and should  
13 include the name of the site, the site identification number (103R), and the title of this Consent Order.  
14 Checks shall be forwarded to: Mellon Bank, EPA-Region 10, Superfund Accounting, P.O. Box  
15 360903M, Pittsburgh, PA 15251.

16           4. Copies of the transmittal letter and check should be sent simultaneously to the  
17 EPA Project Coordinator.

18           5. Respondents agree to limit any disputes concerning costs to accounting errors and  
19 the inclusion of costs outside the scope of this Consent Order, including, but not limited to, costs for  
20 work which is inconsistent with this Order. Respondents shall identify any contested costs and the basis  
21 of their objection. All undisputed costs shall be remitted by Respondents in accordance with the  
22 schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the  
23 dispute is pending. Respondents bear the burden of establishing an EPA accounting error or the

1 inclusion of costs outside the scope of this Order, or that such costs do not meet the standard for  
2 recovery of costs set forth in Section 107(a)(4)(A) of CERCLA.

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### **XXIII. REIMBURSEMENT OF DEQ RESPONSE COSTS**

5 1. Following the issuance of this Consent Order, DEQ will submit an accounting to  
6 Respondents on a monthly basis of all Support Agency oversight costs incurred by DEQ in  
7 implementation and oversight of this Order. Respondents shall pay all direct and indirect Support  
8 Agency costs incurred by DEQ consistent with this Consent Order, including but not limited to DEQ's  
9 costs of coordinating with EPA regarding uplands source identification and control and in-water  
10 investigations, identifying state ARARs and reviewing data and documents in relation to state ARARs,  
11 including but not limited to ORS 465 and state laws pertaining to releases of petroleum. Respondents are  
12 not responsible under this Order for DEQ's Lead Agency response costs incurred in conducting or  
13 overseeing site assessments and RI/FSs pursuant to ORS Chapter 465, which include source  
14 identification and source control. Respondents shall not be obligated to pay under this Order any  
15 assessment under ORS 465.333, although DEQ may continue to recover such assessments under its  
16 negotiated cost recovery agreements or, where applicable, through other independent legal means. Costs  
17 reimbursable under this Order shall not include costs incurred prior to January 26, 2001.

18 2. Respondents shall, within 30 days of receipt of each DEQ invoice, remit a check  
19 payable to "State of Oregon, Hazardous Substance Remedial Action Fund", mailed to Oregon  
20 Department of Environmental Quality, Accounting, 811 S.W. Sixth Ave., Portland, OR 97204.  
21 Respondents shall pay simple interest of 9% per annum on the balance of any unpaid DEQ costs, which  
22 interest shall begin to accrue at the end of the 30-day payment period.

23 3. DEQ invoices will include a summary of costs billed to date. Upon request to

1 DEQ, Respondents may review underlying documentation including but not limited to: DEQ personnel  
2 time sheets; travel authorizations and vouchers; DEQ contractor monthly invoices; and all applicable  
3 laboratory invoices. Respondents agree to limit any disputes concerning costs to accounting errors and  
4 the inclusion of costs outside the scope of this Consent Order, including, but not limited to, costs for  
5 work which is inconsistent with this Order. Respondents shall identify any contested costs and the basis  
6 for their objection. All undisputed costs shall be remitted by Respondents in accordance with the  
7 schedule set forth above. Respondents bear the burden of establishing a DEQ accounting error or the  
8 inclusion of costs outside the scope of this Order, or that such costs do not meet the standard for  
9 recovery of costs set forth in ORS 465.200(23).

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#### **XXIV DISCLAIMER**

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#### **XXV. OTHER CLAIMS**

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1. In entering into this Consent Order, Respondents neither admit nor deny EPA's Findings of Fact and Conclusions of Law. Respondents' participation in this Order shall not be considered an admission of liability and is not admissible in evidence against Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce this Order.

1. In entering into this order, Respondents also waive any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. §9606(b). Respondents also waive any

1 right to present a claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Order  
2 does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA,  
3 42 U.S.C. § 9611(a)(2). Respondents further waive all other statutory and common law claims against  
4 EPA relating to or arising out of conduct of the RI/FS, including, but not limited to, contribution and  
5 counterclaims.

6           2.       Nothing in this Order shall constitute or be construed as a release from any claim,  
7 cause of action, or demand in law or equity against any person, firm, partnership, subsidiary, or  
8 corporation not a signatory to this Consent Order for any liability it may have arising out of, or relating  
9 in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any  
10 hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site. If any  
11 Section or portion of this Order is invalidated for any reason, all remaining Sections or portions shall  
12 remain in full force and effect.

13

#### 14                   **XXVI. FINANCIAL ASSURANCE/INSURANCE/INDEMNIFICATION**

15           1.       Respondents shall establish and maintain a financial instrument or trust account or  
16 other financial mechanism acceptable to EPA, including a demonstration that one or more of the  
17 Respondents satisfy the requirements of 40 C.F.R. 264.143(f) to perform the work and any other  
18 obligations required under this Consent Order, including a margin for cost overruns. Within forty-five  
19 (45) days after the effective date of this Consent Order, Respondents shall make the demonstration or  
20 fund the financial instrument or trust account sufficiently to perform the work required under this  
21 Consent Order projected for the period beginning with the effective date of the Order through December  
22 31, 2001. Beginning January 1, 2002, and on or before the 15th day of January of each calendar year  
23 thereafter, Respondents shall make the demonstration or fund the financial instrument or trust account

1 sufficiently to perform the work and other activities required under this Order projected for the  
2 succeeding calendar year quarter.

3           2.       To the extent that financial assurance is provided by financial instrument or trust  
4 account, if at any time the net worth of the financial instrument or trust account is insufficient to perform  
5 the work and other obligations under this Order for the upcoming quarter, Respondents shall provide  
6 written notice to EPA within seven (7) days after the net worth of the financial instrument or trust  
7 account becomes insufficient. The written notice shall describe why the financial instrument or trust  
8 account is funded insufficiently and explain what actions have been or will be taken to fund the financial  
9 instrument or trust account adequately.

10           3.       (a)       Prior to commencement of any work under this Order, Respondents shall  
11 either make the demonstration required in paragraph 3(d) below, or shall secure, and shall maintain in  
12 force for the duration of this Order, and for two (2) years after the completion of all activities required  
13 by this Consent Order the following insurance policies naming the United States as an additional  
14 insured:

15                   i.       Comprehensive General Liability (CGL) in the amount of at least \$1  
16 million combined single limit, \$2 million aggregate, including Contractual Liability Insurance in the  
17 amount of one million dollars per occurrence;

18                   ii.       Automobile insurance, with limits of \$1 million, combined single limit,  
19 and

20                   iii.       Umbrella Liability Insurance in excess of CGL and automobile liability  
21 coverage in the amount of \$5 million per occurrence.

22           (b)       Respondents shall also either make the demonstration required in  
23 paragraph 3(d) below or shall secure, and maintain in force for the duration of this Order and for two (2)

1 years after the completion of all activities required by this Consent Order the following:

2 i. Professional Errors and Omissions Insurance in the amount of at least two  
3 million dollars per occurrence.

4 ii. Pollution Liability Insurance in the amount of at least two million dollars  
5 per occurrence, covering as appropriate both general liability and professional liability arising from  
6 pollution conditions.

7 (c) For the duration of this order, Respondents shall satisfy, or shall ensure  
8 that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the  
9 provision of employer's liability insurance and workmen's compensation insurance for all persons  
10 performing work on behalf of the Respondents, in furtherance of this Order.

11 (d) If Respondents demonstrate by evidence satisfactory to EPA that any  
12 contractor or subcontractor maintains insurance equivalent to that described above, or insurance  
13 covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor  
14 Respondents need provide only that portion of the insurance described above which is not maintained by  
15 the contractor or subcontractor.

16 (e) Prior to commencement of any work under this Order, and annually  
17 thereafter on the anniversary of the effective date of this Order, Respondents shall provide certificates of  
18 such insurance and a copy of each insurance policy to EPA.

19 4. At least seven (7) days prior to commencing any work under this Consent Order,  
20 Respondents shall certify to EPA that the required insurance has been obtained by that contractor.

21 5. Respondents agree to indemnify and hold the United States, its agencies,  
22 departments, agents, and employees harmless from any and all claims or causes of action arising from or  
23 on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors,

1 assignees, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors,  
2 in carrying out activities under this Consent Order. The United States or any agency or authorized  
3 representative of the United States shall not be held as a party to any contract entered into by  
4 respondents in carrying out activities under this Consent Order.

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6 **XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATIONS**

7 1. The effective date of this Consent Order shall be the date it is signed by EPA.

8 2. This Consent Order may be amended by mutual agreement of EPA and  
9 Respondents. Amendments shall be in writing and shall be effective when signed by EPA's delegated  
10 authority. EPA Project Coordinators may adjust schedules but do not have the authority to sign  
11 amendments to this Consent Order.

12 3. No informal advice, guidance, suggestions, or comments by EPA regarding  
13 reports, plans, specifications, schedules, and any other writing submitted by Respondents will be  
14 construed as relieving Respondents of their obligation to obtain such formal approval as may be required  
15 by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports),  
16 specifications, schedules, and attachments required by this Consent Order or EPA are incorporated into  
17 this Order upon approval by EPA.

18

19 **XXXVIII. TERMINATION AND SATISFACTION**

20 1. This Consent Order shall terminate when Respondents demonstrate, in writing,  
21 and certify to the satisfaction of EPA that all activities required under this Consent Order, as amended  
22 by any modifications, including any additional work, payment of oversight costs, and any stipulated  
23 penalties demanded by EPA, have been performed and EPA has approved the certification. This notice



1 shall not, however, terminate Respondents' obligation to comply with Sections XVII and XXII of this  
2 Consent Order.

3           2.       The certification shall be signed by a responsible official representing each  
4 Respondent. Each representative shall make the following attestation: "I certify under penalty of perjury  
5 under the laws of the United States that the information contained in or accompanying this certification  
6 is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate  
7 official who is in charge of a principal business function.

8

9                    Issued this \_\_\_\_\_ day of \_\_\_\_\_, 2001  
10                   U.S. EPA, Region X, Office of Environmental Cleanup

11

12                   BY: \_\_\_\_\_

13                               Amber L. Wong, Manager, Site Assessment & Cleanup Unit

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