

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:) ADMINISTRATIVE SETTLEMENT
) AGREEMENT AND ORDER ON
) CONSENT FOR REMOVAL ACTION
)
GASCO Sediments Site within) U.S. EPA Region 10
Portland Harbor Superfund Site) CERCLA Docket No. 10-2009-0255
Portland, Multnomah County, Oregon)
)
NW Natural, an Oregon Corporation, and) Proceeding Under Sections 104,
Siltronic Corporation, a Delaware Corporation) 106(a), 107 and 122 of the
) Comprehensive Environmental
) Response, Compensation, and
Respondents.) Liability Act, as amended, 42 U.S.C.
) §§ 9604, 9606(a), 9607 and 9622
_____)

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency, Region 10 (EPA), NW Natural and Siltronic Corporation (Respondents). This Settlement Agreement provides for the performance of a response action investigation and design activities by Respondents and the payment of response costs incurred by the United States and Tribal Governments at or in connection with an area known as the GASCO Sediments Site within the boundaries of the Portland Harbor Superfund Site in Portland, Oregon. The response action is more fully described in the Statement of Work (“SOW”), Appendix A hereto, and consists of a final sediment remedial investigation, Engineering Evaluation/Cost Analysis (EE/CA) and design for the Gasco Sediments Site.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA).

3. EPA has notified the State of Oregon Department of Environmental Quality (DEQ) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent

proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree: (1) to undertake all Work required by this Settlement Agreement and comply with and be bound by the terms of this Settlement Agreement, subject to the dispute resolution process, and; (2) further agree that they will not contest EPA's authority to issue or enforce this Settlement Agreement, or the basis or validity of this Settlement Agreement or its terms.

5. EPA has entered into a Memorandum of Understanding for the Portland Harbor Site (the "MOU") with, among others, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Nez Perce Tribe (collectively, "the Tribal Governments") to acknowledge the federal government's consultation requirements concerning the Portland Harbor Superfund Site, and to ensure the Tribal Governments' participation in the response actions at the Portland Harbor Superfund Site, including early actions.

6. The Tribal Governments have treaty-reserved rights and resources and other rights, interests, or resources in the Site. The National Oceanic and Atmospheric Administration, the United States Department of the Interior, the Oregon Department of Fish & Wildlife, and the Tribal Governments are designated Natural Resource Trustees overseeing the assessment of natural resource damages at the Site. To the extent practicable, and if consistent with the objectives of the removal action, the work under this Settlement Agreement will be conducted so as to be coordinated with any natural

resource damage assessment and restoration of the Portland Harbor Superfund Site. The Tribal Governments and the federal and state Natural Resource Trustees will be provided an opportunity to review and comment on plans, reports, and other deliverables submitted by Respondents to EPA under this Settlement Agreement.

7. EPA and DEQ have agreed to share responsibility for investigation and cleanup of the Portland Harbor Superfund Site. DEQ is the lead agency for conducting upland work necessary for source control, and EPA is the support agency for that work. EPA is lead agency for conducting in-water work, including coordination of EPA's lead work with DEQ's source identification and source control activities. DEQ is the support agency for EPA's in-water work. DEQ will be provided an opportunity to review and comment on plans, reports, and other deliverables that Respondents submit to EPA under this Settlement Agreement. EPA will determine when sources have been controlled sufficiently for response action(s) to be implemented.

8. To the extent practicable and consistent with the objectives of this removal action, the work under this Settlement Agreement will be coordinated with work implemented under the Administrative Settlement Agreement on Consent for Remedial Investigation and Feasibility Study of the Site, dated September 29, 2001, Docket No. CERCLA-10-2001-0240 and DEQ-led uplands source control actions.

II. PARTIES BOUND

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

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

11. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement prior to performing any work on the project, and that they comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. “Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. “DEQ” or “State” shall mean the State of Oregon Department of Environmental Quality and any successor departments or agencies thereof.
- d. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXX.
- e. “Engineering Evaluation/Cost Analysis” (EE/CA) shall have the definition and attributes described in the NCP, as may be modified by this Settlement Agreement.
- f. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- g. “EPA Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in negotiating, reviewing, implementing, and enforcing this Settlement Agreement. EPA Future Response Costs, include, but are not limited to, scoping, planning, developing and negotiating this Settlement Agreement prior to the Effective Date; and after the Effective Date, reviewing or developing plans, reports and other items pursuant to this Settlement Agreement; verifying the work; reviewing documents, attending meetings, and otherwise coordinating with DEQ on upland cleanup actions, including, but not limited to,

reviewing and commenting on upland source control documents; coordinating with DEQ, the Tribal Governments, and Natural Resource Trustees regarding the removal action; cooperative agreement or other interagency agreement costs related to the removal action; or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs associated with EPA's preparation of any decision documents (including any Action Memoranda or EE/CA approval memo), the costs incurred pursuant to Paragraph 29 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 39 (emergency response), and Paragraph 68 (work takeover), as well as any other enforcement activities undertaken by EPA or the U.S. Department of Justice related to this Settlement Agreement and removal action. EPA Future Response Costs shall not include the costs of oversight or data gathered by EPA concerning any other response action or Settlement Agreement associated with the Portland Harbor Superfund Site. EPA Future Response Costs shall not include monies incurred by any department, instrumentality, or agency of the United States that are not related to overseeing the Work, providing technical or legal support to EPA, or assessing human health and ecological issues related to the GASCO Sediments Site or this Settlement Agreement.

h. "GASCO Sediments Site" shall mean the area in the Willamette River on or adjacent to the former oil gasification plant, encompassing approximately 40 acres, located at 7200 NW Front Avenue and 7900 NW St. Helens Road in Portland, Multnomah County, Oregon. The GASCO Sediments Site includes sediment, surface water, and groundwater where Manufactured Gas Plant (MGP) wastes and volatile

organic compounds (VOC) are present in the Willamette River, as that area will be determined in accordance with the project area identification process described in the SOW.

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

j. “Institutional controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, restricted navigation designations, and anchorage prohibitions.

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

k. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

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

m. “Parties” shall mean EPA and Respondents.

n. “Portland Harbor Superfund Site” shall mean the site in Portland, Multnomah County, Oregon listed on the National Priorities List (NPL) on December 1, 2000. 65 Fed. Reg. 75179-01. The Portland Harbor Superfund Site consists of the areal extent of contamination, including all suitable areas in proximity to the contamination necessary for implementation of response action, at, from and to the Portland Harbor Superfund Site Assessment Area from approximately River Miles 2 to River Mile 12 (Assessment Area), including uplands portions of the Site that contain sources of contamination to the sediments at, on, or within the Willamette River. The boundaries of the Site will be initially determined upon issuance of a Record of Decision for the Portland Harbor Superfund Site.

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

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

q. “Statement of Work” or “SOW” shall mean the statement of work for implementation of the removal action as set forth in Appendix A to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

r. “Tribal Governments” shall mean the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation

of Oregon, and the Nez Perce Tribe. References to “Tribal Governments” in this Settlement Agreement may be a reference to an individual tribe, the tribes collectively, or some combination thereof.

s. “Tribal Response Costs” shall mean all direct and indirect costs that the Tribal Governments and their employees, agents, contractors, consultants and other authorized representatives incur in coordinating and consulting with EPA in conjunction with EPA’s planning and implementation of this Settlement Agreement. Tribal Response costs are only those costs incurred to fulfill the requirements of this Settlement Agreement, including review of plans, reports, assessments and notes prepared pursuant to this Settlement Agreement; development of common positions and coordination among the Tribes; briefings to tribal leaders and tribal communities; and scoping, planning, and negotiating this Settlement Agreement and budgets. Such costs are not inconsistent with the NCP, 40 C.F.R. Part 300, are recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607 and are required to be paid by this Settlement Agreement.

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

u. “Work” shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

13. EPA finds the following facts which Respondents neither admit nor deny:

a. Respondent, NW Natural is the assumed business name of Northwest Natural Gas Company, which in the past owned and operated the GASCO oil gasification plant and by-products refinery (GASCO facility). NW Natural currently owns a portion of the former GASCO facility, located at 7900 NW St. Helens Road in Portland, Oregon. The GASCO facility is located adjacent to the Willamette River, at approximately River Mile 6. NW Natural currently uses its property as a liquefied natural gas storage facility.

b. Portland Gas and Coke Company (GASCO) changed its name to Northwest Natural Gas Company in 1958. GASCO began to purchase property around 1910. Eventually, the GASCO facility was comprised of approximately 150 acres. GASCO built and operated an oil gasification plant and by-products refinery on the facility between 1913 and 1956. Between 1913 and 1923, only gas and lampblack briquettes were produced. In 1923 by-products refining began. After 1925, when tar refining operations began, the quantity of tar within the waste stream would have decreased, but waste tar in the effluent continued to occur as suspended material and emulsions from the secondary tar box. Prior to 1941, all wastewater effluent and tar stills from the gasification process and by-product refining were discharged to a stream channel leading from the production area to the Willamette River, or to low lying areas of the GASCO site. After 1941, wastewater effluent and tar stills were disposed of in settling ponds, some of which were located partly on property now owned by Siltronic.

The plant shut down in 1956. During the life of the Gasco plant, it is reported that

approximately 70,000,000 barrels (2,940,000,000 gallons) of petroleum feedstock were processed. This process generated the following products and by-products: oil gas, lampblack, tar and light oil. From 1941 to 1956, the coke oven generated the following products and by-products: oil gas, coke, tar, and creosote oil. In addition to the preceding by-products, spent oxide (also called purifier box wastes) was generated from the use of iron oxide (iron-impregnated wood chips) or lime as solid reactants for the removal of impurities (e.g., sulfur and cyanide) from the oil gas. DEQ has estimated that when the plant closed in 1956, an estimated 30,000 cubic yards of tar waste had accumulated in the ponds. After NW Natural sold what is now the Siltronic property, the tar settling ponds were buried under at least 10 feet of fill following placement of dredge spoils and other materials on the site by the U.S. Army Corps of Engineers and others.

c. Through several site investigations widespread waste contamination related to the oil gasification and by-product refining has been identified, characterized, and delineated in site soils and groundwater, with contamination also present within Willamette River sediments. Tars have been identified to depths of 70 feet in the vicinity of the former tar settling ponds. In the former plant site area, non-aqueous-phase liquids (NAPLs) were identified at three distinct locations. Monitoring wells installed adjacent to the Willamette River detected elevated levels of benzene and naphthalene. Sediment samples were found to contain high concentrations of polycyclic aromatic hydrocarbons (PAHs) and oil tar waste, including a “tar body” was found to be in the river off of the GASCO river bank. A substantial portion of the tar body was removed in 2005 under a separate Administrative Order on Consent For Removal Action, CERCLA Docket No. 10-2004-0068.

d. When compared to probable effect concentration (PEC) guidelines for freshwater sediments, maximum contaminant concentrations in the former tar body and/or adjacent sediment were detected as follows: phenanthrene up to 5,400 mg/kg (parts per million), more than 1000 times the PEC; naphthalene up to 5,100 mg/kg, more than 1000 times the PEC, and total PAHs up to 26,409 mg/kg, more than 1000 times the PEC.

e. The GASCO site was divided in 1960 and the southern portion, comprising approximately 79.5 acres, was sold to Victor Rosenfeld and H.A. Andersen. An undivided one-third interest in that southern portion was conveyed to Gilbert Schnitzer in 1964. Those parties sold the property to the City of Portland, Portland Development Commission in two transactions, respectively in 1972 and 1978. In 1978, the City of Portland sold the property to Respondent Siltronic Corporation, then known as Wacker Siltronic Corporation.

f. The GASCO tar settling ponds, occupying an area of approximately 3 acres, were located on both the property currently owned by Siltronic and the property retained by NW Natural, and overflowed and drained into an 11-acre low-lying area extending from what is now the Siltronic property boundary to approximately 400 feet upstream. Additionally, an approximate 0.5-acre small apparent waste disposal area was located approximately 500 feet further south from the southern edge of the low-lying area. Further, during the operational history of the GASCO facility, lampblack and spent oxide waste piles were placed near the former gas manufacturing plant on the current western corner of the Siltronic property near the present property boundary with NW Natural, as well as adjacent to the Willamette River near the northern corner of the current NW Natural

property boundary. Fill operations commenced in the mid-1960s, when Rosenfeld, Andersen and Schnitzer owned the property. The ponds and overflow area on the Siltronic property were filled, and manufactured gas plant (MGP) waste, including tars and spent oxide, was buried or mixed into imported fill materials that were then placed on other portions of the present Siltronic property. The imported fill materials included dredge materials from the Willamette River dredging operations, quarry rock, overburden and other materials from offsite. Fill operations on the present Siltronic property continued until the entire property was filled to about 30 feet above mean sea level (MSL) by around 1977. Filling of low lying portions of the NW Natural property, including the former tar settling ponds and drainage ditch, occurred in the mid-1970s and involved mixing of tars from the tar settling pond area with imported quarry rock and overburden to similar elevations as at the adjacent Siltronic property.

g. Respondent, Siltronic Corporation began operating a silicon wafer manufacturing plant on its property in 1980. A solvent recovery system for trichloroethene (TCE) was utilized by Wacker Siltronic Corporation from 1980 to 1989, when TCE use at the facility was discontinued. This recovery system included three underground storage tanks which were in operation from 1980 to 1983, and were removed in 1985 after replacement by an above-ground trichloroethene process. In addition to releases from waste materials from the historical GASCO operations, TCE releases occurred on the Siltronic property. Current information indicates that a release or releases occurred at the Siltronic facility between 1980 to 1984. The release(s) resulted in a TCE plume of groundwater contamination extending from the former TCE handling and storage areas to the Willamette River

h. Related contaminants found in groundwater include: TCE and degradation products, such as vinyl chloride (VC) and dichloroethene (cis-1,2-DCE). Siltronic's upland groundwater investigations have detected up to 575 mg/L TCE and 6.3 mg/L vinyl chloride in groundwater at the northern portion of Siltronic's facility. In July 2003, TCE was detected at 20 feet below ground surface in soil (557 mg/kg) beneath the location of former underground TCE storage tanks also in the northern portion of the facility. In 2004, TCE, cis-1,2-DCE and 1,1-DCE were detected in soil slightly downgradient of the source area. TCE concentrations were 11,600 ug/kg and 3,830 ug/kg at 55 and 80 feet below ground surface, respectively.

i. In the Willamette River, TCE and its degradation products, predominantly cis-1,2-DCE and vinyl chloride (VC) have been detected in shallow groundwater (mudline to 2 feet) samples in the Willamette River in two separate areas: Area 1 where the groundwater plume has been detected discharging to the river; and Area 2, located north (downstream) of Area 1 and closer to the Siltronic/NW Natural property boundary. Area 2 is located offshore of Siltronic's National Pollutant Discharge Elimination System permitted outfall. Concentrations of TCE, cis-1,2-DCE and VC in shallow groundwater have been detected at 48.7 ug/L (TCE), 14,400 ug/L (cis-1,2,-DCE), and 11,900 ug/L (VC) within Area 1. In Area 2, concentrations of TCE, cis-1,2-DCE and VC have been detected at 88,500 ug/L (TCE), 67,000 ug/L (cis-1,2-DCE), and 4,300 ug/L (VC). As reported in the EPA/DEQ Joint Source Control Strategy tables, the ambient water quality standards (AWQCs) for protection of human health from fish consumption for TCE and VC are: 30 ug/L and 2.4 ug/L, respectively. A risk-based surface water screening level for the protection of ecological receptors for cis-1,2-DCE is 590 ug/L .

i. TCE was detected in Portland Harbor RI/FS sediment samples at Area 2 collected from 30 – 104 centimeters below mudline and from 104 - 230 centimeters below mudline respectively, at 1,900,000 ug/kg and 300,000 ug/kg. VC was detected in the 30 – 104 centimeters sample at an estimated 4,000 ug/kg. These samples were also saturated with MGP NAPL., into which TCE strongly partitions, and are not characteristic of co-located surface sediments collected between 0 and 30 cm bml, which were non-detect for TCE and its degradation products. The PEC for TCE is 2,100 ug/kg. Based on the proximity to the NPDES outfall and other investigations, it appears that a release of TCE through this outfall was the source of TCE impacts to Area 2 sediment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

14. Based on the Findings of Fact set forth above EPA makes the following conclusions of law and determinations, which Respondents neither admit nor deny:

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

b. The contamination found on and adjacent to the GASCO Sediments Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare.

c. Respondents are “persons” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for performance of response action and for response costs incurred and to be incurred for the GASCO Sediments Site. Respondents are “owners” and/or “operators” of GASCO Sediments Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1); and/or arranged for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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

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

g. A planning period of at least six months exists before field activities beyond sampling and related scoping activities required by this Settlement Agreement must be initiated.

VI. SETTLEMENT AGREEMENT AND ORDER

15. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record for the GASCO Sediments Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR

16. Respondents shall retain one or more contractors to perform the work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 10 days of the Effective Date. Respondents shall also notify EPA in writing of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to that contractor's or subcontractor's commencement of such Work. EPA retains the right to disapprove any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval.

17. Within 7 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present or readily available during field work. EPA retains the right to disapprove the designated Project

Coordinator. If EPA disapproves the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondents.

18. EPA has designated Sean Sheldrake of the Office of Environmental Cleanup (ECL), Region 10, as its Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the EPA Project Coordinator at 1200 Sixth Avenue, Suite 900, M/S ECL-115, Seattle, WA 98101 via electronic files to sheldrake.sean@epa.gov. Upon request by EPA, Respondents will also provide submissions on a compact disc. All requested electronic submissions must be formatted as directed by the EPA's Project Coordinator in order to be official file copies. Unless otherwise requested, EPA will not require hardcopy submissions of documents.

19. EPA and Respondents shall have the right, subject to Paragraph 17, to change their respective designated Project Coordinator. Respondents shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

20. Respondents shall perform, at a minimum, all actions necessary to implement the Statement of Work (SOW), which is attached as Appendix A, and comply with the schedule attached to the SOW.

21. The EPA Guidance on Conducting Non-Time-Critical Removal Actions under Superfund (OSWER Directive 9360.0-32) and any additional relevant guidance shall be followed in implementing the SOW.

22. The removal response action goals are the further characterization, studies, analysis, and preliminary design that will lead ultimately to a final remedy at the GASCO Sediments Site. Conducting this work now will facilitate construction of the final remedy to begin expeditiously following issuance of a Record of Decision (ROD) for the Portland Harbor Superfund Site. The studies and other work under the SOW will be incorporated into the remedial investigation/feasibility study (RI/FS) for the remedy decision to be made for the Portland Harbor Superfund Site. This response action will include preference for removal of in-river materials containing “substantial product” (as defined in 3.6.2.1 of the SOW) such as Dense Non Aqueous Phase Liquid (DNAPL) and tar. It is anticipated that final remedial action will be implemented under a consent decree following EPA issuance of the ROD. Nonetheless, EPA reserves its claims and does not waive its authority to order the Respondents to perform response actions at the GASCO Sediment Site under CERCLA’s order authorities either before or after a ROD is issued. Respondents agree that this Settlement Agreement does not address the timing or performance of cleanup work and that such work will be the subject of future orders or settlement agreements.

23. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement and SOW, in a written notice to Respondents, EPA may: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. If EPA requires revisions, Respondents shall submit a revised document within 30 days of receipt of EPA's notification of the required revisions. However, EPA shall not modify a submission itself without first providing Respondents at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects. In the event that EPA modifies the submission to cure the deficiencies pursuant to this Section, EPA retains the right to seek stipulated penalties, as provided in Section XVIII. (Stipulated Penalties).

24. Respondents shall implement the Work as approved in writing by EPA. Once any plan, report or other document is approved, or approved with modifications, the subject document and any subsequent modifications, shall be incorporated into and become fully enforceable under this Settlement Agreement. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work until after receiving written EPA approval.

25. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain-of-custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995) and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001),” or equivalent documentation as determined by EPA. A Quality Assurance Project Plan shall be prepared for each sample collection activity in accordance with: (1) “EPA Requirements for Quality Management Plans (QA/R5) (2001)” or the most current version; (2) for data validation, “Guidance on Environmental Data Verification and Validation, EPA QA/G8 (2002)”, or the most current version; and (3) the EPA Functional Guidelines for Data Review. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 14 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. EPA shall use its best efforts to notify Respondents not less than 14 days in advance of any sample collection activity EPA conducts, and allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

26. Reporting.

a. After the Effective Date and until EPA issues a Notice of Completion of Work pursuant to Section XXVIII, Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement on the fifteenth day of each month, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall, at least 30 days prior to the conveyance of any interest in the GASCO Sediments Site or any of Respondents' adjacent upland property give: (1) written notice to the transferee that the GASCO Sediments Site is subject to this Settlement Agreement; and (2) written notice to EPA of the proposed conveyance, including the name and address of the transferee. Such notices shall be given even if the property transferred is not within the final boundaries of the GASCO Sediments Site. Respondents shall also, as a condition of the transfer, require that the transferee and its successors comply with Sections IX (Access and Institutional Controls) and X (Access to Information) of this Settlement Agreement unless, based on the specific circumstances of the transfer and/or transferee, EPA determines that conditioning the transfer in that manner is not necessary.

27. Off-Site Shipments.

a. Respondents shall, prior to any off-site shipment of Waste Material from the GASCO Sediments Site under this Settlement Agreement to an off-site waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the waste material is to be shipped; 2) the type and quantity of the waste material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of

transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the waste material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the response action. Respondents shall provide the information required by Paragraph 27(a) and 27(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the GASCO Sediments Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the GASCO Sediments Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. ACCESS/INSTITUTIONAL CONTROLS

28. If any portion of the GASCO Sediments Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date, provide EPA and DEQ, their representatives, including contractors or agents, with access at all reasonable times to the GASCO Sediments Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement. Respondents shall,

commencing on the Effective Date and, after reasonable advance notice unless accompanied by EPA or DEQ, provide the Tribal Governments, and Natural Resource Trustees, and their representatives, including contractors and agents, with access at all reasonable times to the GASCO Sediments Site, or such other property, for the purpose of consulting on the Work required under this Settlement Agreement, or in the case of cultural resource issues, overseeing the Work required under this Settlement Agreement. If, during or after the removal action is complete, restrictions on the use of Respondents' property, including beds or banks of the river, is necessary to protect public health, welfare, or the environment or maintain the removal action or avoid exposure to hazardous substances, pollutants or contaminants, Respondents shall take any and all actions to establish, implement, and maintain the necessary Institutional Controls. Respondents shall establish, implement, and maintain the necessary Institutional Controls on the schedule and for the duration determined necessary by EPA before or after the EE/CA and/or any subsequent work plans or reports developed under this Settlement Agreement.

29. Where any action under this Settlement Agreement is to be performed on property or in areas, managed or owned by or in possession of someone other than Respondents, Respondents shall use best efforts to obtain all necessary access agreements. For property under the management of the Oregon Department of State Lands, Respondents shall use best efforts to obtain necessary access agreement within 45 days of the Effective Date of this Settlement Agreement. For property owned or controlled by any other person, Respondents shall use best efforts to obtain all necessary access agreements no later than 30 days after EPA determines such access is needed. The

access agreements shall provide access to EPA, DEQ, the Tribal Governments, and Natural Resource Agencies to the same extent as provided in Paragraph 28 above. If, during or after the removal action is complete, restrictions on the use of property are necessary and such property is owned by or in the possession of someone other than Respondents, Respondents shall use best efforts to establish and implement controls it has the capability of implementing, or have such use restrictions established and implemented by the owner on the schedule determined by EPA. Respondents shall notify EPA if, after using its best efforts, it is unable to obtain access agreements or use restrictions. In such notice, Respondents shall describe in writing its efforts to obtain access or the use restrictions. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access or loss of use. EPA may then assist Respondents in gaining access or establishing use restrictions, to the extent necessary to effectuate the response action or maintain it as described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access or use restrictions, in accordance with the procedures in Section XV (Payment of EPA Future Response Costs and Tribal Response Costs).

30. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

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

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

33. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing

documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information required to be created or generated by this Settlement Agreement shall be withheld on the grounds that they are privileged.

34. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the GASCO Sediments Site.

XI. RECORD RETENTION

35. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the work or the liability of any person under CERCLA with respect to the GASCO Sediments Site, regardless of any internal retention policy to the contrary unless Respondents have received EPA's written permission to destroy such documents. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents,

records, and information of whatever kind, nature or description relating to performance of the Work.

36. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, it shall provide EPA with the following:

1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information required to be created or generated by this Settlement Agreement shall be withheld on the grounds that they are privileged.

37. Each Respondent hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Portland Harbor Superfund Site since notification of potential liability by EPA and it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and Section 3007 of RCRA, 42 U.S.C. § 6927 as also certified in its responses to such EPA requests.

XII. COMPLIANCE WITH OTHER LAWS

38. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental or facility siting laws. No local, state, or federal permit shall be required for any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with this Settlement Agreement. Respondents shall identify ARARs in the EE/CA subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

39. In the event of any action or occurrence during performance of the Work which causes or threatens to cause a release of Waste Material from the GASCO Sediments Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her

unavailability, the Regional Duty Officer, Environmental Cleanup Office, Emergency Response Unit, EPA Region 10, (206) 553-1263, of the incident or conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

40. In addition, in the event of any release of a hazardous substance from the GASCO Sediments Site, Respondents shall immediately notify the EPA Project Coordinator and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001, *et seq.*

XIV. AUTHORITY OF EPA PROJECT COORDINATOR

41. The EPA Project Coordinator shall be responsible for overseeing Respondents implementation of this Settlement Agreement. The Project Coordinator shall have the authority vested in an On-Scene Coordinator (OSC) by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the GASCO Sediments Site, as well as the authority of a Remedial Project Manager (RPM) as set forth in the NCP. Absence of

the EPA Project Coordinator from the GASCO Sediments Site shall not be cause for stoppage of work unless specifically directed by the EPA Project Coordinator.

XV. PAYMENT OF EPA AND TRIBAL RESPONSE COSTS

42. Payments for EPA Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents' Project Coordinator a bill requiring payment that includes a certified Agency Financial Management System summary (SCORPIOS) cost summary report or other regionally prepared cost summary. The bill will include Future Response Costs as defined in this Settlement Agreement. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 45 of this Settlement Agreement.

b. Respondents shall make all payments to EPA required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund-Portland Harbor Special Account," referencing the name and addresses of the Respondents, the Docket Number of this Settlement Agreement, and EPA Site/Spill ID Number 10EW and shall be clearly designated as Response Costs: Portland Harbor Superfund Site, GASCO Sediments Site. Respondents shall send the check(s) to the following address:

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

c. At the time of payment, Respondents shall send notice that payment has been made to: (1) the EPA Project Coordinator; (2) to the following email: acctsreceivable.cinwd@epa.gov; and (3) to EPA Cincinnati Finance Office, 26 Martin Luther King Drive, MS-NWD, Cincinnati, OH 45268.

43. The total amount to be paid to EPA by Respondents pursuant to Paragraph 42(a) of this Settlement Agreement shall be deposited in the Portland Harbor Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Portland Harbor Superfund Site, or to be transferred by EPA to the Hazardous Substance Superfund.

44. If payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of Respondents' receipt of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

45. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP or outside the scope of the Settlement Agreement. Such dispute shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any dispute shall specifically identify the contested Future Response Costs and the basis

for the objection. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 42(b) of this Settlement Agreement on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Oregon. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 42(c) above, together with a copy of the correspondence that established and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account to the EPA Project Coordinator. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus Interest within 10 days after the dispute is resolved.

46. Payment of Past Tribal Response Costs.

a. Within 30 days of the execution of this Settlement Agreement, the Tribal Governments shall submit invoices to the Respondents for past costs associated with the development of this Settlement Agreement. Respondents shall notify the Tribal Governments in writing within forty-five (45) days of receipt of invoices for the Tribal Governments' past Tribal Response Costs whether Respondents approve them for payment. For all past Tribal Response Costs not approved by Respondents, this written notice must include a detailed justification for non-approved response costs. Past response costs for which Tribal Governments do not receive written notice within forty-

five (45) days are deemed approved and uncontested. Respondents and the Tribal Governments may negotiate to reach agreement on past cost payments. Respondents shall pay approved response costs within thirty (30) days of the date of Respondents notice of the approval. The invoices shall cover the Tribal Governments' costs incurred for the period between notification by EPA of the possible early action in November of 2008 and the effective date of this Settlement Agreement. The Tribal Governments' supporting documentation shall consist of timesheets and/or payroll reports, travel expense reports, and contractor invoices. For tribal consultants, for each project manager, senior associate and principal, a spreadsheet shall detail the following information: date, task, staff member, and hours billed. Expenses shall be detailed, and backup documentation shall be provided for all expenses.

b. Respondents and the Tribal Governments reserve all rights and claims they may have regarding any amounts in the past cost invoices not approved and paid by Respondents. Respondents reserve all rights, privileges, and defenses they may have to challenge and/or defend such claims. All claims arising from and related to unpaid Tribal Response Costs shall be brought in the United States District Court for the District of Oregon.

c. Respondents, or either of them, may, in their sole discretion, dispute all or part of an invoice for Past Tribal Response Costs submitted under this Settlement Agreement, if Respondents allege that the Tribal Government has made an accounting error, if Respondents allege that a cost item is inconsistent with the NCP, if Respondents allege that a cost item is not within the definition of "Tribal Response Costs," or if Respondents allege that the Tribal Governments failed to provide the

documentation required in Paragraph 46(a). Respondents shall identify any disputed costs and the basis for their objection. Respondents shall bear the burden of establishing facts sufficient to support their allegation(s). Disputes of Past Tribal Response Costs shall be handled pursuant to Paragraph 47.e.

47. Payment of Future Tribal Response Costs.

a. After the effective date of this Consent Settlement Agreement, Respondents shall pay the Tribal Governments, in advance, for Tribal Response Costs incurred pursuant to this Settlement Agreement.

b. Within thirty (30) days of the effective date of this Settlement Agreement, and 45 days prior to the beginning of each fiscal year thereafter until EPA issues a Notice of Completion of Work, Respondents and the Tribal Governments shall meet to discuss the work to be performed under this Settlement Agreement and to negotiate an estimated annual budget for Tribal Response Costs. The Tribal Governments shall develop a reasonable estimated budget (with an appropriate contingency) for Tribal Response Costs for the fiscal year, which shall separately identify anticipated costs for each Tribal Government and their technical consultants. The estimated annual budget shall separately identify the activities to be performed with an estimate of costs associated with such types of activities. Respondents shall notify the Tribal Governments of their approval or disapproval of the estimated budget within 30 days of receipt. Within fifteen (15) days of the date of Respondents' written notification to the Tribal Governments of Respondents' approval of the estimated budget, Respondents shall remit a check for the amount identified in the approved estimated budget made payable to the corresponding Tribal Government at the appropriate address.

The amount identified for the five tribes' shared technical consultant (Stratus Consulting) shall be sent to the Confederated Tribes of the Grand Ronde Community of Oregon. The amount identified for Ridolfi shall be sent to the Confederated Tribes and Bands of the Yakama Nation. Respondents and the Tribal Governments reserve all rights and claims they may have regarding any amounts in the estimated budget not approved and paid by Respondents. Respondents reserve all rights, privileges and defenses it may have to challenge and/or defend such claims. All claims arising from and related to unpaid Tribal Response costs shall be brought in the United States District Court for the District of Oregon. The addresses of the Tribal Governments are as follows:

The Confederated Tribes of the Grand Ronde Community of Oregon

Attn: Accounting Department
The Confederated Tribes of the Grand Ronde Community of Oregon
9615 Grand Ronde Road
Grand Ronde, Oregon 97347

The Confederated Tribes of Siletz Indians of Oregon

Attn: Karen Bell
Accounting Department
The Confederated Tribes of Siletz Indians of Oregon
P.O. Box 549
Siletz, Oregon 97380

The Confederated Tribes of the Umatilla Indian Reservation

Attn: Accounts Receivable, Finance Department
The Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801

The Confederated Tribes of the Warm Springs Reservation of Oregon

Attn: Finance Department
The Confederated Tribes of the Warm Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

The Nez Perce Tribe

Attn: Office of Legal Counsel
The Nez Perce Tribe
P.O. Box 305
Lapwai, Idaho 83540

The Confederated Tribes and Bands of the Yakama Nation

Central Accounting
The Confederated Tribes and Bands of the Yakama Nation
P.O. Box 151
Toppenish, WA 98948

c. Within thirty (30) days of the close of the estimated budget period, the Tribal Governments shall provide supporting documentation to the Respondents for Response Costs reimbursed by the Respondents. The Tribal Governments' supporting documentation shall consist of timesheets and/or payroll reports, travel expense reports, and contractor invoices. For tribal consultants, for each project manager, senior associate and principal, a spreadsheet shall detail the following information: date, staff member, and hours billed. Expenses shall be detailed, and backup documentation shall be provided for all expenses.

d. In the event that the Tribal Governments have overestimated the amount of funding required for a budget period and the Respondents have paid more than the amount of Tribal Response Costs incurred for work during such budget period, the Tribal Governments shall apply such overpayments to reimburse Tribal Response Costs in the following budget period. To the extent that the Tribal Governments have incurred Tribal Response costs in addition to the estimated budget for the budget period, the additional costs shall be included in the estimate for the subsequent budget period. At the completion of the Work under this Settlement Agreement, all unexpended funds

advanced to the Tribal Governments for Tribal Response Costs shall be refunded to Respondents.

e. Following the receipt of support documentation provided in Subsection c. above, Respondents may dispute all or a portion of Tribal Response Costs reimbursed or not approved by Respondents during the previous budget period under this Settlement Agreement, if Respondents allege that the Tribal Government has made an accounting error, if Respondents alleges that a cost item is inconsistent with the NCP, if Respondents allege that a cost item is not within the definition of “Tribal Response Costs,”, or if Respondents allege that the Tribal Governments failed to provide the documentation required in Paragraph 47(c). Respondents shall identify any disputed costs and the basis for their objection. Respondents shall bear the burden of establishing facts in support of their allegations. Respondents, in their sole discretion, may choose to invoke the dispute resolution provisions of Section XVI, provided that Respondents’ notice of their objections under paragraph 48 shall be made to the appropriate Tribal Government, in addition to EPA, and the appropriate Tribal Government shall prepare a written response to Respondents’ written objections. EPA shall make the final decision on the dispute subject to the rights reserved by Respondents and the Tribal Governments in this Settlement Agreement. Nothing in this paragraph shall in any way be construed to limit the rights of the Tribal Governments to seek to recover response costs incurred by the Tribal Governments related to this Settlement Agreement and not reimbursed by Respondents, and for natural resource liability. Nothing in this paragraph shall in any way be construed to limit any rights, privileges and defenses Respondents may have to challenge and/or defend claims arising from or related to unpaid Tribal Response Costs

or natural resource liability. All claims arising between the Tribal Governments and Respondents related to Tribal Response Costs and natural resource liability shall be brought in the United States District Court for the District of Oregon.

XVI. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. In accordance with Section XV., Paragraphs 46(c) and 47(e) of this Settlement Agreement, the Tribal Governments shall provide written responses to Respondents' disputes about Tribal Response Costs, and Respondents and the Tribal Governments will engage in negotiations to resolve disputes in accordance with Paragraph 49 below. EPA may be a decision maker pursuant to Paragraph 50 below.

49. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for EPA Future Response Costs, they shall notify EPA in writing of their objection(s) within 14 days of such action, unless the objection(s) has/have been resolved informally, or EPA has agreed in writing to extend the informal dispute resolution period. Respondents' notice shall provide all of the reasons for its objections and attach any supporting information or documentation that it is relying on to raise the dispute. EPA and Respondents shall then have 30 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period") with EPA's Remedial Action Unit Manager. EPA may, in its sole

discretion, prepare a written response to Respondents' written objections. The Negotiation Period may be extended at the sole discretion of EPA. At EPA's discretion and approval, the dispute record may be supplemented during the Negotiation Period.

50. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by all Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, EPA's position shall be the final decision and binding upon Respondents, unless within 5 days of the end of the Negotiation Period, Respondents requests the determination of EPA Region 10's Director of the Office of Environmental Cleanup (ECL). If the Director is not available to render a timely decision, the Director may delegate the decision-making function to the Associate Director of ECL. The Director will issue a written decision on the dispute to Respondents based on the record created pursuant to Paragraph 49 above. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement that are not affected by the disputed issue(s) shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

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

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 10 days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim, including supporting documentation for such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the

period of time of such failure to comply and for any additional delay caused by such failure.

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

XVIII. STIPULATED PENALTIES

54. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 55 and 56 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). “Compliance” by Respondents shall include completion of the activities under this Settlement Agreement or any work plan, or other plan approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, all Appendices, and any plans, reports or other documents

approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

55. Stipulated Penalty Amounts - Work.

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

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

b. The final and all submitted drafts of the following Compliance Milestones:

- i. Work Plan;
- ii. Area Identification Report and Data Gaps Report;
- iii. EE/CA and Data Report;
- iv. Biological Assessment and Clean Water Act Analysis;
- v. Preliminary Design;
- vi. Interim Design; and
- vii. Health and Safety Plans.

56. Stipulated Penalty Amounts - Reports, Other Non-Compliance, including late Payment of Future Response Costs. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate final and all submitted draft reports or other written documents pursuant to this Settlement Agreement that are not

listed in Paragraph 55(b). The following stipulated penalties shall accrue per violation per day for any non-compliance with the requirements of this Settlement Agreement, including late payments of EPA Future Response Costs.

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

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 68 of Section XX, Respondents shall be liable for a stipulated penalty in the amount of \$200,000 or 25% of the cost of the Work EPA performs, whichever is less.

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient first draft submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to an issue that Respondents chooses to seek a decision by the ECL Director or Associate Director under Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period ends until the date that the ECL Director or Associate Director issues a final

decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

59. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. Except for deficient first draft submissions as provided in the preceding Paragraph, penalties shall accrue regardless of whether EPA has notified Respondents of a violation.

60. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the address set forth in Paragraph 42.c, above, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 10EW, the EPA Docket Number of this Settlement Agreement, and the name and address of the parties making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 17, and to other receiving officials at EPA identified in Paragraph 42.c, above.

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

62. Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 58 above, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

63. If Respondents fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to this Section. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 68.

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

XIX. COVENANT NOT TO SUE BY EPA

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

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of EPA Future Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606 for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the GASCO Sediments Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the GASCO Sediments Site or the Portland Harbor Superfund Site.

68. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may

assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

70. Subject to the reservation contained in Paragraph 71 below, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, EPA Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; or

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

71. Respondents covenant not to sue and agree not to assert any claims or causes of action against EPA, or its contractors or employers, with respect to Work or EPA's Future Response Costs pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613. Nothing in this Settlement Agreement shall preclude Respondents from asserting claims or causes of action pursuant to Section 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, against agencies or departments of the United States other than EPA.

72. a. Except as provided in Paragraph 79, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues a Settlement Agreement pursuant to the reservations set forth in Paragraphs 67 (b), (c) and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

b. Respondents reserve, and this Order is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim

include a claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

XXII. OTHER CLAIMS

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

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

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

XXIII. CONTRIBUTION

77. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work as described in the SOW and EPA Future Response Costs as defined in this Settlement Agreement. Nothing in this subparagraph is intended to modify, waive or impair any contractual agreements between the Respondents.

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

c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United

States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f)(2-3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

78. Respondents agree that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondents further agree that with respect to any suit or claim for contribution brought against them for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint on it. In addition, Respondents shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any Settlement Agreement from a court setting a case for trial.

79. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the GASCO Sediments Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in this Settlement Agreement.

XXIV. INDEMNIFICATION

80. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

82. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the GASCO Sediments Site, including, but not limited to, claims on account of construction delays.

In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the GASCO Sediments Site, including, but not limited to, claims on account of construction delays. The waiver in this Paragraph does not apply to any potential CERCLA contribution or cost recovery claims Respondents may have against the United States for response costs incurred in performing Work under this Settlement Agreement.

XXV. INSURANCE

83. At least 7 days prior to commencing any field work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$1 million (\$1,000,000), per occurrence, plus umbrella insurance in excess of the comprehensive general liability and automobile liability coverage in the amount of \$4 million (\$4,000,000) per occurrence. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or

insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

84. Within 30 days of the Effective Date and on the anniversary of the Effective Date every year thereafter until Notice of Completion of the Work in accordance with Section XXVIII below is received from EPA, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$3 million (\$3,000,000) in one or more of the following forms, in order to secure the full and final completion of Work by Respondents. Within 30 days of the Effective Date, financial security under this Settlement Agreement shall be established in one or more of the following forms for the full amount required:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. A trust fund administered by a trustee acceptable in all respects to EPA;
- d. A policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. A written guarantee to pay for or perform Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have

a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. A demonstration of sufficient financial resources to pay for the Work made by one or more of the Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

85. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 84, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

86. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 84(e) or 84(f) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information

required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references “sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates,” the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$3 Million for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

87. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining work has diminished below the amount set forth in Paragraph 84 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

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

XXVII. MODIFICATIONS

89. EPA may determine that in addition to tasks defined in the SOW, or initial approved work plan, other additional work may be necessary to accomplish the objectives of the removal action. EPA may request in writing Respondents to perform these response actions and Respondents shall confirm its willingness to perform the additional work, in writing, to EPA within 14 days of receipt of EPA's request, or Respondents may invoke dispute resolution in accordance with Section XVI. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA determines are necessary. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

90. If Respondents seek permission to deviate from any approved work plan or schedule or the Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator pursuant to Paragraph 24.

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

XXVIII. NOTICE OF COMPLETION OF WORK

92. Upon the request of Respondents or on its own initiative, EPA may determine, after its review of the Final Design Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to, Institutional Controls and monitoring, if any, payment of EPA Future Response Costs, or record retention, and EPA will provide written notice to Respondents. EPA will use best efforts to respond to Respondents' request in a timely manner. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies, or modify the Removal Action Work Plan, if necessary. Respondents shall correct the deficiencies or, if appropriate, implement the modified and approved Work Plan, and shall submit a modified Final Design Report in accordance with the EPA notice, subject to its right to invoke dispute under Section XVI of this Settlement Agreement. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement. This Settlement Agreement shall be terminated if all obligations and uncompleted Work required by this Settlement Agreement is included in a consent decree with Respondents and/or other persons and entered as a final judgment.

XXIX. INTEGRATION/APPENDICES

93. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to

the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

- a. Appendix A: Statement of Work.

XXX. EFFECTIVE DATE

94. This Settlement Agreement shall be effective on the day it is issued by EPA. Each undersigned representative of Respondents certify that (s)he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind Respondent.

XXXI. NOTICES AND SUBMISSIONS

95. Documents including work plans, reports, approvals, disapprovals, and other correspondence required to be submitted under this Settlement Agreement, shall be sent to the individuals at the addresses specified below in the format indicated. All agencies and governments are responsible for giving written notice of a change to Respondents and the other parties. All notices and submissions shall be considered effective one business day after receipt by Respondents' Project Coordinator, unless otherwise provided.

- a. One (1) copy of EPA correspondence or other communications to Respondents' Project Coordinator in electronic form: and

b. Respondents shall submit all documents in electronic form to sheldrake.sean@epa.gov or via CD-ROM. Only if requested, three (3) hard copies of documents to be submitted to EPA shall be forwarded to:

Sean Sheldrake
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
MS ECL-115
Seattle, Washington 98101

c. One (1) hardcopy of documents or electronic file shall be submitted to DEQ:

James M. Anderson
DEQ Northwest Region
2020 SW Fourth Ave, Suite 400
Portland, Oregon 97201
anderson.jim@deq.state.or.us

Electronic file or CD-ROM transmissions to the following contacts:

d. Oregon Department of Fish & Wildlife:

Rick Kepler
Oregon Department of Fish & Wildlife
2501 SW First Avenue
Portland, Oregon 97207
rick.j.kepler@state.or.us

e. NOAA:

Rob Neely
Coastal Resources Coordination
c/o EPA Region 10
1200 Sixth Avenue (MS ECL-117)
Seattle, WA 98101
Rob.neely@noaa.gov

Dr. Nancy Munn
NOAA Fisheries
525 NE Oregon Street, Suite 500
Portland, Oregon 97232-2737
nancy.munn@noaa.gov

f. USFW:

Jeremy Buck
US Fish & Wildlife
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
jeremy_buck@r1.fws.gov

Kemper McMaster, State Supervisor
U.S. Fish and Wildlife Service
Oregon Fish and Wildlife Office
2600 SE 98th Ave., Suite 100
Portland, Oregon 97266
Kemper_McMaster@fws.gov

g. U.S. Department of Interior:

Preston Sleeper
Regional Environmental Officer
Pacific Northwest Region
500 NE Multnomah St., Suite 356
Portland, Oregon 97232
reopn@mindspring.com

h. Confederated Tribes of the Warm Springs Reservation of Oregon:

Brian Cunninghame
5520 Skyline Drive
Hood River, Oregon 97031
cunninghame@gorge.net

i. Confederated Tribes and Bands of the Yakama Nation:

Rose Longoria
Yakama Nation
Fisheries Management Program
P.O. Box 151
4690 SR 22
Toppenish, Washington 98948
rose@yakama.com

j. Confederated Tribes of the Grand Ronde Community of Oregon:

Michael Karnosh
Confederated Tribes of the
Grand Ronde Community of Oregon
47010 SW Hebo Road
Grand Ronde, Oregon 97347
Michael.Karnosh@grandronde.org

k. Confederated Tribes of the Siletz Indians:

Tom Downey
Environmental Specialist
Confederated Tribes of the Siletz Indians
P.O. Box 549
Siletz, Oregon 97380
tomd@ctsi.nsn.us

l. Confederated Tribes of the Umatilla Indian Reservation:

Audie Huber
Confederated Tribes of the Umatilla Indian Reservation
Department of Natural Resources
73239 Confederated Way
Pendleton, Oregon 97801
audiehuber@ctuir.com

m. Nez Perce Tribe:

Erin Madden
Cascadia Law, P.C.
4803 SE Woodstock, #135
Portland, OR 97206
erin.madden@gmail.com

XXXI. ADMINISTRATIVE RECORD AND PUBLIC COMMENT

96. EPA will determine the contents of the administrative record file for selection of the removal action. In accordance with this Settlement Agreement and the SOW, Respondents shall submit to EPA documents developed during the course of the EE/CA upon which selection of the response action may be based. Respondents shall assist EPA, as requested, before and during the comment period with its community relations activities concerning the EE/CA. At EPA's request, Respondents shall establish a community information repository at or near the GASCO Sediments Site, to house one copy of the administrative record. In accordance with 40 CFR §§ 300.415(m)(4) and 300.820, EPA will provide a public comment period of not less than 30 days on the

EE/CA, unless the Proposed Plan for the Portland Harbor Superfund Site is issued for public comment first. After considering public comments received, and reviewing additional data or analyses required to complete the EE/CA, if necessary, EPA may select a final removal action.

It is so Ordered and Agreed this 9th day of September, 2009.

By:



Deb Yamamoto,
ECL Unit Manager
U.S. EPA, Region 10

Agreed this 2nd day of September, 2009.

For Respondent NW Natural

By: Margaret D Kirkpatrick
Margaret D Kirkpatrick
Printed Name
Vice President & General Counsel
Title

Agreed this 1 day of SEPTEMBER, 2009.

For Respondent Siltronic Corporation

By: [Signature]
NEIL NELSON
Printed Name
PRESIDENT & CEO SILTRONIC CORP.
Title

