

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:)	U.S. EPA Region 1
)	CERCLA Docket No. 1-2011-0033
)	
FORMER TOMBARELLO AND SONS)	ADMINISTRATIVE SETTLEMENT
PROPERTY SITE, LAWRENCE,)	AGREEMENT AND ORDER ON
MASSACHUSETTS)	CONSENT FOR REMOVAL ACTION
)	
FIRST LAWRENCE FINANCIAL, LLC,)	
)	
RESPONDENT.)	
)	
)	
)	
)	
Proceeding Under Sections 104, 106(a),)	
107 and 122 of the Comprehensive)	
Environmental Response, Compensation,)	
and 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 ("EPA") and First Lawrence Financial, LLC ("First Lawrence" or the "Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the Former Tombarello and Sons Property Site in Lawrence, Essex County, Massachusetts (the "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 Commonwealth of Massachusetts (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

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

6. Respondent agrees to be jointly and severally responsible for carrying out all activities required by this Settlement Agreement.

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

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, 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. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on July 7, 2010, by the by the Director of the Office of Site Remediation & Restoration, and all attachments, thereto. The Action Memorandum is attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

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

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXII.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "MassDEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the State.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 33 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 43 (emergency response), and Paragraph 67 (work takeover). Among other things, Future Response Costs shall not include costs that the United States incurs for performing response activities on residential parcels as described in the Action Memorandum.

h. "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.

i. "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.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondent.

l. "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).

m. "Respondent" and "First Lawrence" shall mean First Lawrence Financial, LLC. First Lawrence holds a security interest in the Site by virtue of an Assignment of Mortgage, Security Agreement and Assignment, recorded in the Northern Essex District Registry of Deeds, Book 9520, Page 274, and an assignment recorded in the Northern Essex District Registry of Deeds, Book 9788, Page 189. First Lawrence is not the record-owner of the Site.

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "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.

p. "Site" shall mean the Former Tombarello and Sons Property Site, encompassing an approximately 14-acre former metal scrap recycling facility known as the John C. Tombarello & Sons Property ("Tombarello Property"), the address of which is 207 Marston Street (Map 33, Lot 17), and nine abutting privately-owned residential properties. The nine impacted residential properties are located at 19-53 Hoffman Avenue in Lawrence, Essex County, Massachusetts (Map 33, Lots 14, 13, 12, 12A, 11, 10-1, 10-2, 9 and 8), north of the Tombarello Property, and collectively encompass approximately 2 acres. The Site is depicted generally on the map attached as Appendix B.

q. "State" shall mean the Commonwealth of Massachusetts.

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

s. "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 material" under Mass. Gen. L. ch. 21E, § 2.

t. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. The Site is located in Lawrence, Essex County, Massachusetts and is depicted generally on the map attached as Appendix B to this Settlement Agreement. The Site is bounded on the east by I-495, on the west by Marston Street, on the north by the Hoffman Avenue, and on the south by industrial properties. A middle school is located across Marston Street from the Tombarello Property.

10. From approximately 1941-1998, the Tombarello Property was used as a scrap metal recycling facility.

11. Analytical results of soil samples taken by EPA from the back yards of the residential properties on the Site detected the presence of polychlorinated biphenyls (PCBs) and metals, including, but not limited to, lead, cadmium, chromium and arsenic.

12. Analytical results of soil samples taken by EPA from the Tombarello Property detected the presence of PCBs and metals, including, but not limited to, lead, cadmium, chromium and barium.

13. [Reserved.]

14. Respondent or its predecessor allegedly conducted the following activities on the Tombarello Property: excavation, screening, and magnetic separation of metals from on-site soils located on the Tombarello Property, and operational instruction of tractor-trailer trucks.

15. On April 29, 2008, EPA performed a Preliminary Assessment/Site Investigation ("PA/SI") on the Site.

16. Based on the results of EPA's PA/SI on the Site, on July 7, 2010, the Director of the Office of Site Remediation & Restoration issued an Action Memorandum authorizing the

performance of a time-critical removal action at the Site to address contaminated soils. The Action Memorandum documented that actual or threatened releases of hazardous substances, if not addressed by implementing the response action selected in the Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

17. In August 2010, EPA notified Respondent of its status as a potentially responsible party ("PRP") at the Site and afforded it the opportunity to perform or finance necessary removal actions.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

18. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Former Tombarello and Sons Property Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a potentially responsible party within the meaning of that term as defined under Section 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and 9607(a)(2).
- e. The conditions described in the Paragraphs in Section IV (Findings of Fact) above constitute an actual or threatened "release" of a hazardous substance from and/or at the facility into the environment as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The removal 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 consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

20. Respondent 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 two (2) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least two (2) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within two (2) days of EPA's disapproval.

21. Within two (2) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent 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 on the Tombarello Property or readily available during work on the Tombarello Property. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within two (2) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

22. EPA has designated Eric Vanderboom of the Emergency Planning and Response Branch, Region 1, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at the following address:

Eric Vanderboom
U.S. Environmental Protection Agency
Office of Site Remediation & Restoration
Emergency Planning & Response Branch
Emergency Response & Removal Section I
5 Post Office Sq., Suite 100

OSRR02-2

Boston, MA 02109-3912

TEL (617) 918-1259

FAX (617) 918-0259

23. EPA and Respondent shall have the right, subject to Paragraph 21, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA two (2) 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

24. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work, which is attached at Appendix C, and is incorporated as if set forth herein. The following is a brief summary/overview of the Work to be performed by Respondent pursuant to this Settlement Agreement.

- a. Establish a command post and staging area which will include a portable restroom and water service, or access to water service via a temporary meter/fire hydrant
- b. Preparation of a Health & Safety Plan which will include measures for decontamination of working personnel and equipment.
- c. Perform air monitoring for dust with DataRAM, DustTrackII or similar monitoring equipment. Supplies needed for dust suppression must be readily available if and when determined to be necessary.
- d. Removal of concrete blocks located along the western edge of proposed excavation area. The blocks will be relocated and stacked on a paved area of the property.
- e. Clearing of trees located within excavation area. Removed trees will be chipped on-site. Tree chippings will be added to existing mulch stockpiles. Trees that cannot be chipped will be removed from the site.
- f. Relocation of existing stockpile present within proposed excavation area.
- g. Installation of haybales along the residential property line. The haybales will be placed on excavated edge of fence line following placement of clean fill and berm in that area. Haybales will be placed on top of berm and remain at project completion.
- h. Preparation of soil stabilization area to encompass an approximate 150'x150' area located on the southern portion of the property. Preparation activities will include the following:
 - i. An approximate 15'x30' area of petroleum-impacted soil beneath the excavator to be removed and relocated on-site will be excavated to a depth of 6 inches. Stockpiled soils will be placed on and covered with 6-mil polyethylene sheeting. Soils removed from that area will be stockpiled separately on-site while awaiting

removal to an approved disposal facility and transported under manifest documentation. Contractor shall sample stockpile for receiving facility requirements. Soil shall be disposed at a permitted RCRA/TSCA facility.

- ii. Additional preparation of the soil stabilization area will include removal of 20'x65'x1' reinforced concrete slab. Slab shall be stockpiled on-site.
 - iii. Surround soil stabilization area with staked haybales.
 - iv. A layer of non-biodegradable filter fabric with an overlapping 3 foot seams will be placed on 150'x150' soil stabilization area prior to placement of excavated soils.
- i. Excavation of a 600'x50' area of soil on the former Tombarello Property. Soil will be excavated to a depth of 1 foot below surface grade.
 - j. Relocation of excavated soil on-site to soil stabilization area.
 - k. Stumps that cannot be placed in the stabilization area due to size shall be removed off-site with the contaminated soil referenced above.
 - l. Placement of non-biodegradable filter fabric on base of completed excavation with 3 feet overlapping seams.
 - m. Backfilling of excavation with common burrow.
 - n. Loam and hydro-seeding of backfilled excavation area.
 - o. Stabilization of excavated soils on-site. Soil stabilization area will be covered with non-biodegradable filter fabric, followed by 4 inches of loam and hydro-seeded.
 - p. Hydro-seeding additional exposed areas of the Tombarello Property as directed.
 - q. Removal of miscellaneous OHM containers located on the Tombarello Property. Oily solids beneath the OHM storage area will be drummed and removed from the Tombarello Property.
 - r. Placement of appropriate signage indicating that the Site is contaminated. Signs will be placed every 100 feet on existing fencing along the western (Marston Street), southern (recreational field) and eastern (Route 495) portions of the Tombarello Property. Signage will be installed on posts every 100 feet along the boundary of the abutting waste management facility. It is anticipated that approximately 25 signs will be placed on existing fencing and approximately 12 signs will be placed on posts along the Waste Management boundary.

25. Work Plan and Implementation.

a. As further described in the SOW, within one (1) day after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 24 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The soil excavation (600 foot by 50 foot area) must be completed on or before May 6, 2011 with the balance of Respondent's on-site activities as set forth in Paragraph 24 (other than post-removal site control) to be completed by May 27, 2011.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within one (1) day of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 25(b).

26. Health and Safety Plan. Prior to contractor mobilization on-site, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

27. 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. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent 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. Respondent 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. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent 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, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than two (2) 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. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

28. Post-Removal Site Control. In accordance with the schedules approved in any work plans, or otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control for the Tombarello Property consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls for the Tombarello Property and shall provide EPA with documentation of all post-removal site control arrangements.

29. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every two (2) weeks after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. 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. Respondent shall submit all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan in electronic form. Upon request by EPA, Respondent shall submit paper copies.

c. Any Respondent who owns or controls property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent who owns or controls property at the Site also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

30. Final Report. Within forty-five (45) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

31. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene 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. Respondent 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. Respondent 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 Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 31(a) and 31(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 Site to an off-site location, Respondent 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. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

32. Respondent shall, commencing on the Effective Date, and to the extent it is authorized/permitted to do so as a secured lender, provide EPA, the State, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property where access is needed to implement this Settlement Agreement.

33. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use their best efforts to obtain all necessary access agreements within two (2) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

34. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

35. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the 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. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

36. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by 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 and the State, or if EPA has notified Respondent 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 Respondent.

37. Respondent 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 the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and the State 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 Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

38. 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 Site.

XI. RECORD RETENTION

39. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

40. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondent shall deliver any such records or documents to EPA or the State. Respondent 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 Respondent asserts such a privilege, they shall provide EPA or the State 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 Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

41. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

42. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site 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 or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region 1, telephone number (617) 918-1236 and the EPA Regional Emergency 24-hour telephone number (617) 723-8928 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

44. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (617) 918-1259 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

45. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an 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 Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

46. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that consists of a Region I Cost Summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by the United States. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 48 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 01FQ. Respondent shall send the check(s) to:

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

Alternatively, Respondent may make all payments by Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The EFT shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 01FQ, and the EPA docket number for this action.

c. At the time of payment, Respondent shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

and

Tina Hennessy, Enforcement Coordinator
U.S. Environmental Protection Agency
5 Post Office Square – Suite 100 (OSRR02-2)
Boston, MA 02109-3912
Hennessy.tina@epa.gov

d. The total amount to be paid by Respondent pursuant to Paragraph 46 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

47. In the event that the payments for Future Response Costs are not made within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date 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 Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

48. Respondent may contest payment of any Future Response Costs billed under Paragraph 46 if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 46. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Massachusetts and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 46. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 46. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in

Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

49. 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.

50. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within five (5) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have seven (7) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

51. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the branch level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent 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

52. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels set forth in the Action Memorandum/Enforcement.

53. 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, Respondent

shall notify EPA orally within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within three (3) days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, 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 Respondent 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.

54. 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 are 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, which is not affected by the *force majeure* event. 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

55. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 56 and 57 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

56. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance except those non-compliance penalties identified in Paragraph 56(b) below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.00	1st through 14th day
\$1,000.00	15th through 30th day
\$1,500.00	31st day and beyond

b. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports [or other written documents] pursuant to Paragraphs 29 and 30:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.00	1st through 14th day
\$1,000.00	15th through 30th day
\$1,500.00	31st day and beyond

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 67 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$35,000.

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 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 a decision by the EPA Management Official at the branch level or higher, under Paragraph 51 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

60. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent 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 U.S. Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, Missouri 63197-9000, shall indicate that the payment is for stipulated penalties and shall reference the EPA Region and Site/Spill ID Number 01FQ, the EPA Docket Number, CERCLA Docket Number 01-2011-0033, and the name and address of the party(ies) making payment. Copies of

check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 46(b).

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

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

63. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 59. 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 Respondent's 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 in this Section, 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 67. 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

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

XX. RESERVATIONS OF RIGHTS BY EPA

65. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take,

direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement 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 Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

66. 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 Respondent with respect to all other matters, including, but not limited to:

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

67. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is 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. Respondent 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 Respondent 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 RESPONDENT

68. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Massachusetts 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; or

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

69. 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).

70. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

71. The waiver in the preceding Paragraph shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource

Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXII. OTHER CLAIMS

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

73. Except as expressly provided in Section XIX (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 Respondent 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.

74. 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

75.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 Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

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

c. Nothing in this Settlement Agreement precludes the United States or Respondent 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).

XXIV. INDEMNIFICATION

76. Respondent 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 Respondent, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent 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 Respondent, 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 Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

78. Respondent waives 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 Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

79. At least two (2) days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement

Agreement, comprehensive general liability insurance and automobile insurance with limits of \$1 million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent 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 Respondent in furtherance of this Settlement Agreement. If Respondent 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 Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

80. Within ninety (90) days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$ 100,000.00 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- 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 or escrow account administered by a trustee or escrow agent 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 the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; 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 Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

81. 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, Respondent shall, within thirty (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 80, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

82. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 80(e) or 80(f) of this Settlement Agreement, Respondent 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 \$100,000.00 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.

83. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 80 of this Section, Respondent may 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. Respondent 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 after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

XXVII. MODIFICATIONS

85. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

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

87. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent 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

88. When EPA determines, after EPA's review of the Final 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 post-removal site controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

89. 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:


- i. Appendix A: Action Memorandum
- ii. Appendix B: Site Map
- iii. Appendix C: Statement of Work

XXX. EFFECTIVE DATE

90. This Settlement Agreement shall be effective one (1) business day after the Settlement Agreement is signed by the Director, Office of Site Remediation & Restoration. The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

Administrative Settlement Agreement (CERCLA Docket No. 1-2011-0033)
Former Tombarello and Sons Property Site

It is so ORDERED and Agreed this 25th day of April, 2011.

By: 
James T. Owens, III, Director
Office of Site Remediation & Restoration
U.S. Environmental Protection Agency

For Respondent First Lawrence Financial, LLC

By _____

Title _____

Date _____

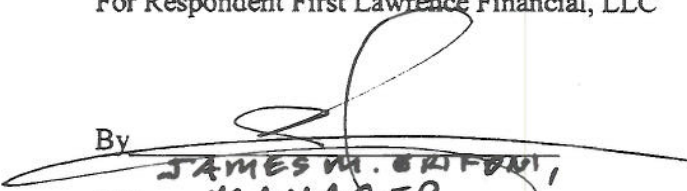
EFFECTIVE DATE: _____

Administrative Settlement Agreement (CERCLA Docket No. 1-2011-0033)
Former Tombarello and Sons Property Site

It is so ORDERED and Agreed this ____ day of April, 2011.

By: _____
James T. Owens, III, Director
Office of Site Remediation & Restoration
U.S. Environmental Protection Agency

For Respondent First Lawrence Financial, LLC

By: 
Title MANAGER

Date 4.21.11

EFFECTIVE DATE: 4/26/2011

APPENDIX A – ACTION MEMORANDUM

Administrative Settlement Agreement (CERCLA Docket No. 1-2011-0033)
Former Tombarello and Sons Property Site



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE - SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

CONTAINS ENFORCEMENT-SENSITIVE INFORMATION

MEMORANDUM

DATE: July 7, 2010

SUBJ: Request for a Removal Action at the Former Tombarello & Sons Property Site,
Lawrence, Essex County, Massachusetts - Action Memorandum

FROM: Mike Barry, On-Scene Coordinator
Emergency Response and Removal Section I

THRU: David McIntyre, Chief
Emergency Response and Removal Section

Arthur V. Johnson III, Chief
Emergency Planning & Response Branch

TO: James T. Owens III, Director
Office of Site Remediation and Restoration

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the proposed removal action at nine residential properties and the abutting abandoned industrial facility in Lawrence, Massachusetts. Hazardous substances present in surficial soils, if not addressed by implementing the response actions selected in this Action Memorandum, will continue to pose a threat to human health and the environment. There are no nationally significant or precedent-setting issues associated with the Site, and there has been no use of the On-Scene Coordinator's (OSC) \$200,000 warrant authority.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID# : MAD019426238
SITE ID# : 01FQ
CATEGORY : Time-Critical

A. Site Description

1. Removal site evaluation

The "Site" consists of nine privately-owned residential properties (total of approximately 2 acres) and an abandoned former metal scrap recycling facility (14 acres) known as Tombarello and Sons. Operations had included magnetic separation of metals from soil and truck driving instruction, both of which generated dust for many years. The residential properties have reportedly been contaminated due to their proximity to the facility. They are all currently occupied, and their condition and features are consistent with well-maintained homes.

Tombarello had erected a fence between the homes and the facility in the mid-1960s, and later maintained it to help mitigate fugitive dust from entering the residential properties.

On April 2, 2008 the Site was referred by letter to EPA from the Massachusetts Department of Environmental Protection (MassDEP), who had already sampled the nine residential properties and the facility, as a potential removal action. On April 29, 2008, EPA performed a Preliminary Assessment/Site Investigation (PA/SI) on the residential properties.¹

2. Physical location

The impacted residential properties are located at 19-53 Hoffman Avenue in Lawrence, Essex County, Massachusetts (Map 33, Lots 14, 13, 12, 12a, 11, 10-1, 10-2, 9 and 8), north of the Tombarello property the address of which is 207 Marston Street (Map 33, Lot 17); (42 43' 10.88 North latitude, 071 08' 29.41 West longitude). This mixed industrial/ residential area is bounded on the east by I-495, on the west by Marston Street, on the north by the Hoffman Avenue, and on the south by industrial properties. A middle school is located across Marston Street from the Tombarello property.

3. Site characteristics

The Tombarello property is generally level, contains several buildings and building foundation pads, and is secured with chain-link fencing. Most of the equipment, metal and debris have been removed, but some, including one excavator, remains. The surface is a mostly bare soil/gravel mix with some sparse vegetation and some soil piles. A drainage ditch runs from the north to the southwest, adjacent to I-495. Sampling on the northern property boundary indicates contamination with PCBs and metals in surface soil (see Table 1 on page 3).

The residential properties are well-maintained and contain homes, lawn, decorative shrubbery/trees and a variety of outbuildings and patios. Elevated levels of polychlorinated biphenyls (PCBs) and metals have been detected throughout the back yards (see Table 2 on page 4).

¹ The facility was not inspected at that time because of access issues.

A narrow strip of land in the back of some of the residential properties is legally part of the Tombarello & Sons property, but had been incorporated as an integral part of the resident's back yards for years because the fence was placed inside the Tombarello & Sons property and a vegetative border evolved.

According to the Region ArcGIS mapping tool, within one mile of the Site there are:

- 21,968 residents;
- 8 public and private schools;
- One day care center;
- One hospital;
- Two nursing homes.

According to the EPA Region 1 Environmental Justice Mapping Tool, the Site is not in an environmental justice area.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Analysis of 17 soil samples from the northern property line of the Tombarello & Sons property detected PCBs, lead, cadmium, chromium and barium in excess of MassDEP and/or EPA screening levels for unrestricted residential use.

Table 1: Tombarello Site Northern Property Line Contaminant Concentrations in mg/kg (ppm)				
	PCB (Ar-1260)	Lead	Cadmium	Chromium
MAX	6.33	1730.00	17.00	57.70
AVE	2.51	391.16	4.14	33.00
MassDEP S-1	2	300	2	30
ATSDR	1			
Imminent Hazard (MADEP)	10		60	

Analysis of 129 soil samples from the residential properties detected PCBs, lead, cadmium, chromium and arsenic in excess of MassDEP and/or EPA screening levels for unrestricted residential use.

The PA indicated that the pathway of the contaminants to the abutting yards was both by air via wind and dust and by surface water run-off. SI sampling supports these pathways by indicating that the contamination is on or near the ground surface. In the following table summarizing the data, highlighted entries indicate exceedences of allowable contaminant levels and associated properties.

Table 2: Tombarello Site Residential Contaminant Concentrations in mg/kg (ppm)					
Residence	PCB	Lead	Cadmium	Chromium	Arsenic
19 Hoffman	0.68	171.60		14.80	31.20
21 Hoffman	1.47	141.60		24.60	
25 Hoffman	1.01	300.00	1.80		
27/29 Hoffman	0.36	88.50		24.50	13.50
31 Hoffman	1.44	158.50		26.50	
33 Hoffman	0.30	114.80			
41 Hoffman	1.70	595.50	5.20	30.75	
51 Hoffman	2.82	273.50	1.90	25.90	
53 Hoffman	1.26	153.30	2.80	30.50	
MassDEP S-1	2.00	300.00	2.00	30.00	20.00
ATSDR	1.00				

5. NPL status

The Site is not currently on the National Priorities List, and has not received a Hazardous Ranking System rating.

B. Other Actions to Date

1. **Previous actions.** MassDEP performed & directed sampling is described below.
2. **Current actions.** There are no other current EPA actions.

C. State and Local Authorities' Roles

1. **State and local actions to date.** MassDEP retained Shaw E & I to sample the Hoffman Ave. residential back yards for PCBs and RCRA 8 metals in 2007. This is documented in a Shaw E & I Letter Report dated 11/17/2007.

At MassDEP's direction, First Lawrence Financial, the secured lender for the facility, contracted for sampling of the northern property line for PCBs and RCRA 8 metals in early 2007. This is documented in a Weston Solutions, Inc Immediate Response Action Completion Report dated April 2007.

The City of Lawrence Inspectional Services Department ordered the ceasing of dust creating activities at least once, circa 2006.

MassDEP has listed the Tombarello property with a Release Tracking Number (RTN 3-18126) in the State's Massachusetts Contingency Plan (the MCP) waste site cleanup program, 310 CMR 40.000. Using new risk methodology, they advocated a much

lower residential soil PCB cleanup level than the 1.0 mg/kg that EPA uses nationwide. This conflicted with EPA's intended approach to the removal action, not the least of which was the increased scope and cost of the project under the newly-proposed level. The Site was put on hold by mutual agreement between EPA and DEP while this issue was resolved. This has now occurred in favor of using the EPA residential soil cleanup level for PCBs.

2. **Potential for continued State/local response.** MassDEP doesn't have the resources to conduct a removal action, but will continue to play an active support, public outreach and state regulatory role. MassDEP will inform the residents of the sampling results on their yards in coordination with the EPA removal project. The City of Lawrence has been in danger of default or being placed into State Receivership and doesn't have the resources to remedy this situation.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; [§300.415(b)(2)(i)];

High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate [§300.415(b)(2)(iv)];

PCBs and RCRA metals contamination in surficial soils in residential yards and on the Tombarello and Sons property presents a threat to residents of both the impacted households and in the surrounding area, children attending school across the street and the general public. The exposure pathways include direct exposure and via exposure to dust from wind transport. Specific pathways include:

- Dermal contact during gardening, other normal yard activities and via dust;
- Ingestion, especially by children when playing;
- Inhalation, especially by children when playing in areas where the soil is bare and via dust;
- Ingestion through the food web from gardening activities, and;
- On-going exposure and recontamination due to suspension of dust from exposed soil on the 14-acre facility.

Specifically; PCBs (primarily Arochlor 1260), lead, cadmium, chromium and arsenic contamination are at concentrations greater than either the MassDEP S-1 standards for residential soils and/or ATSDR levels for unrestricted residential use.

PCBs - The most commonly observed health effects in people exposed to large amounts of PCBs are skin conditions such as acne and rashes. Studies in exposed workers have shown changes in blood and urine that may indicate liver damage. Animals that ate food containing large amounts of PCBs for short periods of time had mild liver damage and some died. Animals that ate smaller amounts of PCBs in food over

several weeks or months developed various kinds of health effects, including anemia; acne-like skin conditions; and liver, stomach and thyroid gland injuries.

Other effects of PCBs in animals include changes in the immune system, behavioral alterations, and impaired reproduction. The Department of Health and Human Services (DHHS) has concluded that PCBs may reasonably be anticipated to be carcinogens. The EPA and the International Agency for Research on Cancer (IARC) have determined that PCBs are probably carcinogenic to humans.²

Lead - The effects of lead are the same whether it enters the body through breathing or swallowing. Lead can affect almost every organ and system in the body. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High level exposure in men can damage the organs responsible for sperm production.

The Department of Health and Human Services (DHHS) has determined that lead and lead compounds are reasonably anticipated to be human carcinogens and the EPA has determined that lead is a probable human carcinogen. The International Agency for Research on Cancer (IARC) has determined that inorganic lead is probably carcinogenic to humans and that there is insufficient information to determine whether organic lead compounds will cause cancer in humans.³

Cadmium - Breathing high levels of cadmium can severely damage the lungs. Eating food or drinking water with very high levels severely irritates the stomach, leading to vomiting and diarrhea. Long-term exposure to lower levels of cadmium in air, food, or water leads to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile bones.

The Department of Health and Human Services (DHHS) has determined that cadmium and cadmium compounds are known human carcinogens.

The health effects in children are expected to be similar to the effects seen in adults (kidney, lung, and bone damage depending on the route of exposure). A few studies in animals indicate that younger animals absorb more cadmium than adults. Animal studies also indicate that the young are more susceptible than adults to a loss of bone and decreased bone strength from exposure to cadmium.

Although a definitive link between cadmium and human birth defects has not been established, the babies of animals exposed to high levels of cadmium during pregnancy had changes in behavior and learning ability. There is also some information from animal studies that high enough exposures to cadmium before birth can reduce body weights and affect the skeleton in the developing young.⁴

² Agency for Toxic Substances and Disease Registry (ATSDR). 2000. Toxicological Profile for Polychlorinated Biphenyls (PCBs). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service

³ Agency for Toxic Substances and Disease Registry (ATSDR). 2007. Toxicological Profile for Lead (Update). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

⁴ Agency for Toxic Substances and Disease Registry (ATSDR). 2008. Toxicological Profile for Cadmium (Draft for Public Comment). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

Arsenic - Breathing high levels of inorganic arsenic may cause sore throats or irritated lungs. Ingesting very high levels of arsenic can result in death. Exposure to lower levels can cause nausea and vomiting, decreased production of red and white blood cells, abnormal heart rhythm, damage to blood vessels, and a sensation of "pins and needles" in hands and feet. Ingesting or breathing low levels of inorganic arsenic for a long time can cause a darkening of the skin and the appearance of small "corns" or "warts" on the palms, soles, and torso. Skin contact with inorganic arsenic may cause redness and swelling. Several studies have shown that ingestion of inorganic arsenic can increase the risk of skin cancer and cancer in the liver, bladder, and lungs. Inhalation of inorganic arsenic can cause increased risk of lung cancer. The Department of Health and Human Services (DHHS) and the EPA have determined that inorganic arsenic is a known human carcinogen. The International Agency for Research on Cancer (IARC) has determined that inorganic arsenic is carcinogenic to humans.⁶

The availability of other appropriate Federal or State response mechanisms to respond to the release [§300.415(b)(2)(vii)];

None exist.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.⁷

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

Specific removal activities will include the following:

- Conduct a site walk with the cleanup contractor;
- Conduct additional sampling as needed to assess contaminant disposition and concentration;
- Perform health & safety monitoring;
- Perform public communication and outreach activities;
- Install security and/or health and safety fencing as necessary;
- Provide security guard service as required by the OSC;
- Clear vegetation, debris and other interfering structures as needed;

⁶ Agency for Toxic Substances and Disease Registry (ATSDR). 2007. Toxicological Profile for Arsenic (*Update*). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

⁷ In accordance with OSWER Directive 9360.0-34, an endangerment determination is made based on relevant action levels, cleanup standards, risk management guidance, or other relevant information published and relied upon by the State of Massachusetts and by the Agency for Toxic Substances and Disease Registry.

- Inventory and document existing property conditions, including foundations, driveways, ornamental vegetation, landscaping and yard structures such as pools, outbuildings and patios;
- Excavate contaminated soil such that residential properties will meet MassDEP and/or ATSDR residential standards, and the facility meets appropriate commercial standards, on an average basis;
- Remove other incidental hazardous substances at the direction of the OSC;
- Perform confirmation sampling and analysis;
- Perform dust control and mitigation measures as necessary;
- Backfill excavations;
- Pre-treat hazardous substances if beneficial for off-site disposal options;
- Dispose of hazardous substances at EPA-approved off-site disposal facilities; and
- Repair response-related damages; including replanting of lawns, ornamental vegetation, landscaping, fences, etc.

2. Community relations

Community relations will include outreach by the OSC to abutters and the local community, including distribution of informative fliers, and, specific to the private properties involved, the OSC having face-to-face meetings with the residents. Use of other means of communication, e.g., press releases or use of epaosc.net, will be undertaken and incorporated into the Community Response Plan (CRP).

MassDEP has already done extensive community relations for this Site and will be coordinated with closely.

3. Contribution to remedial performance

The cleanup proposed in this Action Memorandum is designed to mitigate the threats to human health and the environment, and will be consistent with and will not impede any future responses.

4. Description of alternative technologies

Although use of alternative technologies is not anticipated, they will be considered if deemed beneficial. Technology to optimize the confirmation samples and accelerate the removal action pace, such as use of an on-site lab or statistical analysis, will be considered.

5. Applicable or relevant and appropriate requirements (ARARs)

Federal ARARs:

40 CFR Part 262 Standards Applicable to Generators of Hazardous Waste:

Subpart B - The Manifest

- 262.20 : General requirements for manifesting
- 262.21 : Acquisition of manifests
- 262.22 : Number of copies of manifests
- 262.23 : Use of the manifest

Subpart C - Pre-Transport Requirements

- 262.30 : Packaging
- 262.31 : Labeling
- 262.32 : Marking

Subpart D - Recordkeeping and Reporting

- 262.40 : Recordkeeping

40 CFR Part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities:

Subpart I - Use and Management of Containers

- 264.171 : Condition of containers
- 264.172 : Compatibility of waste with containers
- 264.173 : Management of containers
- 264.174 : Inspections
- 264.175 : Containment
- 264.176 : Special requirements for ignitable or reactive waste
- 264.177 : Special requirements for incompatible wastes

40 CFR Part 264 Hazardous Waste Regulations - RCRA Subtitle C:

- 268-270 : Hazardous and Solid Waste Amendments Land Disposal Restrictions Rule

40 CFR Part 300.440 Procedures for Planning and Implementing Off-Site Response Actions (Off-Site Rule)

40 CFR Part 761.60 and Parts 761.202-218 : TSCA requirements for disposal of PCBs

State ARARs: Massachusetts Contingency Plan, 310 CMR 40.0975 (6)(a), Table 2; MCP Method 1 Soil Category S-1 Standards.

The OSC will coordinate with State officials to identify additional State ARARs, if any. In accordance with the National Contingency Plan and EPA Guidance Documents, the OSC will determine the applicability and practicability of complying with each ARAR which is identified in a timely manner.

6. Project schedule

All work is expected to be completed within one year from the mobilization date.

B. Estimated Costs

COST CATEGORY		CEILING
<i>REGIONAL REMOVAL ALLOWANCE COSTS:</i>		
ERRS Contractor		\$1,029,000.00
<i>OTHER EXTRAMURAL COSTS NOT FUNDED FROM THE REGIONAL ALLOWANCE:</i>		
START Contractor		\$176,000.00
Extramural Subtotal		\$1,205,000.00
Extramural Contingency	20%	\$241,000.00
TOTAL, REMOVAL ACTION CEILING		\$1,446,000.00

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will increase public health risks to the residents due to potential contact with contaminated soil in excess of MassDEP and ATSDR guidance levels.

VII. OUTSTANDING POLICY ISSUES

There are no outstanding precedent-setting policy issues associated with this Site. Discussions regarding PCB cleanup concentration were undertaken with MassDEP before MassDEP concurred to using the ATSDR standard concentration of 1.0 ppm that EPA has used for other sites nationwide.

VIII. ENFORCEMENT ... For Internal Distribution Only

See attached Enforcement Strategy.

The total EPA costs for this removal action based on full-time accounting practices that will be eligible for cost recovery are estimated to be \$1,446,000 (extramural costs) + \$53,100 (EPA intramural costs) = \$1,499,100 X 1.4541 (regional indirect rate) = **\$2,179,841.00⁸**.

⁸Direct Costs include direct extramural costs \$1,446,000 and direct intramural costs \$53,100. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site specific costs [45.41% x \$1,499,100, consistent with the full accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

IX. RECOMMENDATION

This decision document represents the selected removal action for the residential properties abutting the Former Tombarello & Sons Property in Lawrence, MA developed in accordance with CERCLA, as amended, and is not inconsistent with the National Contingency Plan. The basis for this decision will be documented in the administrative record to be established for the Site.

Conditions meet the NCP Section 300.415 (b) (2) criteria for a removal action due to the following:

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants [§300.415(b)(2)(i)];

High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate [§300.415(b)(2)(iv)];

The availability of other appropriate Federal or State response mechanisms to respond to the release [§300.415(b)(2)(vii)];

I recommend that you approve the proposed removal action. The total removal action project ceiling if approved will be \$1,446,000.

APPROVAL: _____

DATE: _____

DISAPPROVAL: _____

DATE: _____

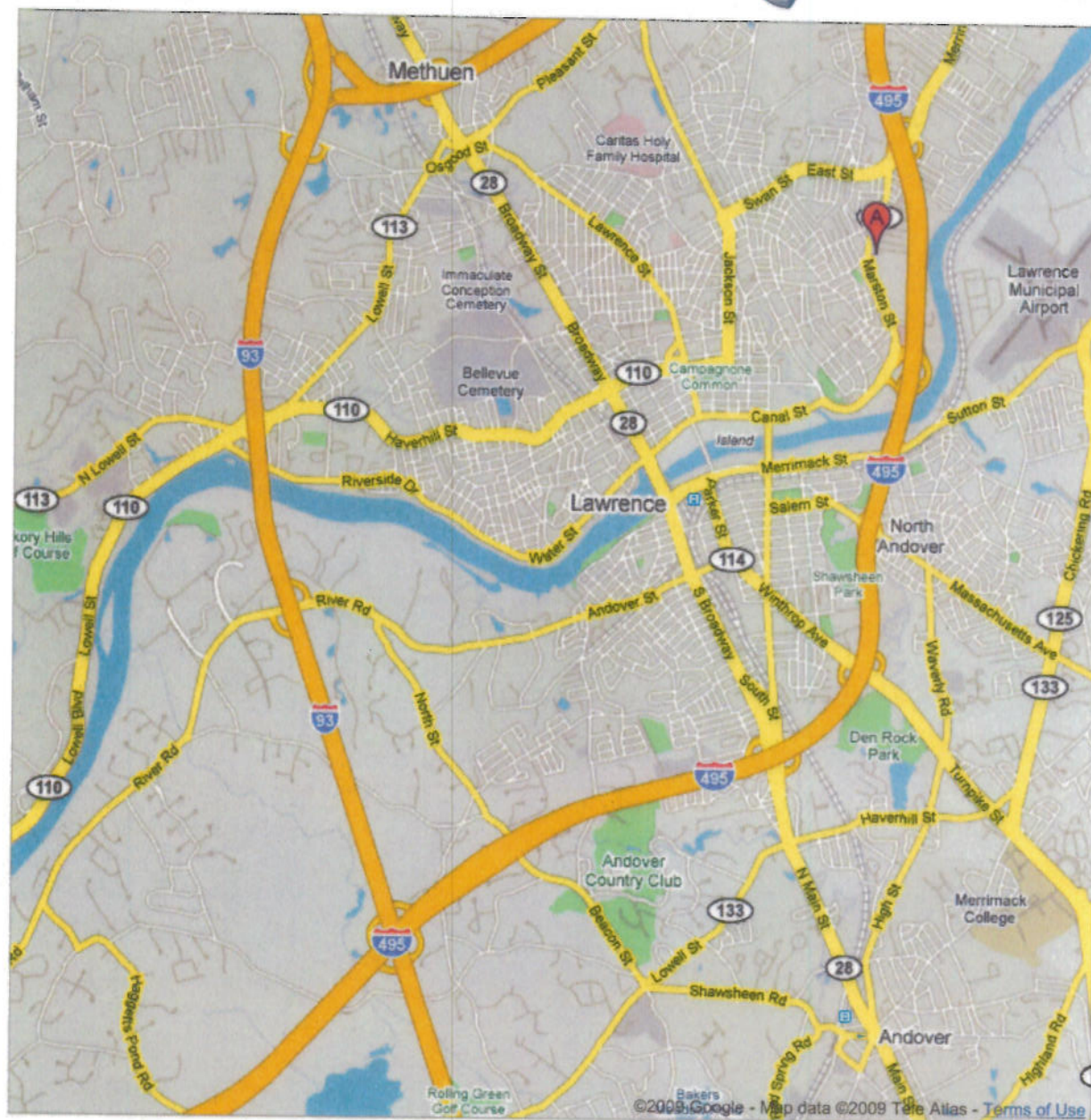


Address 207 Marston St
Lawrence, MA 01841

Get Google Maps on your phone



Text the word "GMAPS" to 466453





309 Main St, Lawrence, MA 01841

APPENDIX B – SITE MAP

Appendix B

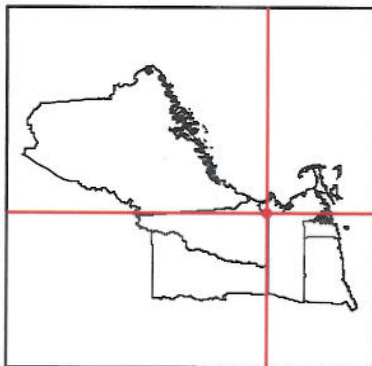
Former Tombarello & Sons Property Site

207 Marston St. Lawrence, MA

Former Tombarello
& Sons Property Site



Location:



Created by EPA Region 1 GIS Center
April 14, 2011 Map Tracker ID 7652

Data Sources:

Navteq Streets, Bing Maps



APPENDIX C

STATEMENT OF WORK

FORMER TOMBARELLO AND SONS PROPERTY SITE, LAWRENCE, MASSACHUSETTS

Pursuant to

Administrative Settlement Agreement and Order on Consent

CERCLA Docket No. 01-2011-0033

I. INTRODUCTION

This Statement of Work ("SOW") identifies the components of the work required pursuant to the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") (CERCLA Docket 01-2011-0033) for the Former Tombarello and Sons Property Site (the "Site"), located in Lawrence, MA. Under this SOW, Respondent shall prepare and submit to the U.S. Environmental Protection Agency – Region I ("EPA") the items identified below. The removal action conducted under this Settlement Agreement and SOW shall abate the potential danger to public health or welfare or the environment, which may otherwise result from the actual or threatened release of hazardous substances at or from the Site.

General Requirements

- 1) The On-Scene Coordinator ("OSC") shall be the primary contact for communications between EPA and Respondent related to the implementation of the SOW. Respondent shall communicate freely with the OSC prior to and during the development of plans and deliverables, and routinely throughout the implementation of the work described in this SOW. Open and routine communication will result in the most effective, safe, and efficient cleanup. If deliverables are required, draft documents may be submitted for consideration prior to the due date and submission of the final documents.
- 2) Respondent shall perform and complete all activities in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, applicable guidance documents provided by EPA, and the provisions of this Settlement Agreement, including any standards, specifications, and time schedules contained in the SOW, specified by the OSC, or contained within EPA-approved plans.
- 3) In conducting all activities under this Settlement Agreement, Respondent shall comply with Section 300.150 of the NCP, 40 C.F.R. § 300.150, which references the standards promulgated by the Occupational Safety and Health Administration (Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910.120), including development and implementation of a Health and Safety Plan.
- 4) Unless otherwise specifically indicated, each required deliverable generated pursuant to the specific requirements described below must be approved by the OSC prior to implementation, and performed in accordance with that approval.
- 5) By telephone or otherwise, Respondent shall inform EPA of any disposal shipments no less than three (3) working days prior to the event. (In the event of an emergency, Respondent shall immediately take all appropriate action as required by Paragraphs 43 and 44 of the Settlement Agreement.)

- 6) Notwithstanding any other specifically required document submissions to EPA, Respondent shall submit to EPA a report every two weeks detailing Site activities, problems encountered, other important issues, and activities anticipated in the two weeks to follow.
- 7) Respondent shall take necessary precautions to properly prevent unauthorized access into the Site where excavations are being conducted during the course of the removal action, including but not limited to the maintenance of fencing, and replacement of any missing or illegible signs.

II. WORK TASKS

1) Within two (2) days of the Effective Date of the Settlement Agreement:

- a. Respondent shall submit Cleanup Contractor and Project Coordinator information to EPA for review and approval.

Respondent shall submit to EPA the name, address, telephone number, and qualifications of an environmental services cleanup contractor ("Cleanup Contractor"), designated to perform the work required by the Settlement Agreement and SOW in accordance with all of its terms and conditions. Respondents shall notify EPA of the name, address, telephone number and qualifications of any other contractor(s) or subcontractor(s) to be used at the Site at least **one (1) day** in advance of their performance of any work under this Settlement Agreement.

2) Prior to contractor mobilization on-site:

- a. Respondent shall submit a site-specific Health and Safety Plan to EPA for review and comment.

Respondent shall ensure that all persons performing work at the Site in connection with this Settlement Agreement shall comply with the requirements of the Health and Safety Plan.

The Health and Safety Plan shall, at a minimum:

- 1) Designate an on-Site Safety and Health Supervisor, define his/her role and authority, and list any other critical personnel (including the alternate supervisor) who will assist the supervisor.
- 2) Characterize the safety and health risk or hazard analysis for each of the tasks and/or operations associated with the work.
- 3) Specify the personnel training requirements necessary to comply with tasks and/or operations associated with the work.

- 4) Specify the appropriate levels of personal protective equipment that shall be worn to conduct the tasks and/or operations associated with the work.
- 5) Specify medical surveillance requirements. Based upon the anticipated season when work will be performed and the required level of personnel protective equipment, the potential site-specific health hazards including physical stress due to temperature shall be included.
- 6) Specify the frequency and types of air, dust, and personnel monitoring. Identify the environmental sampling methods and the monitoring instrumentation to be used (*e.g.*, personal air sampling devices with filter cassettes), which must be consistent with the work plan to be submitted under Paragraph 3 of this Section.
- 7) Specify site control measures. The Health and Safety Plan shall include a site map with initial delineation of work zones (as zones change, the map shall be amended and resubmitted) as well as how the work zones will be cordoned off. Include the means by which all employees will be notified in an emergency, and location and identification of the nearest medical assistance.
- 8) Describe the decontamination procedures for personnel, equipment and machinery that will be used to conduct the tasks and/or operations associated with the work.
- 9) Include an Emergency Response Plan. The Emergency Response Plan shall describe the appropriate response to various contingencies that may reasonably be anticipated to arise during the course of implementing the work required under this Settlement Agreement. The Emergency Response Plan shall also include a list of emergency phone numbers and a map, which identifies the location and the route to the nearest hospital that will accept injured personnel.
- 10) Describe the precautions to be taken to ensure the safety of local residents. The precautions shall include, but not be limited to, conducting air monitoring consistent with the work plan to be submitted under Paragraph 3 of this Section and implementing procedures to minimize migration of contaminants while conducting cleanup operations, *e.g.*, wetting down ground surface to prevent fugitive dust emissions.
- 11) Describe the spill containment program/procedures.

b. Quality Assurance Project Plan

The Respondent shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP"), in letter form, for the purpose of assuring that all analytical results generated during the work are of known quality. The QAPP shall include the sampling plan and the third party lab's QA/QC procedures.

Respondent has submitted to EPA a draft work plan for removal activities for EPA review and approval. EPA's approval of the work plan shall be provided on or before the April 25, 2011.

a. The draft work plan shall contain, at a minimum, a description of, and a proposed schedule for, implementation of the work, and shall describe, at a minimum, that Respondent will:

- Establish a command post and staging area which will include a portable restroom and water service, or access to water service via a temporary meter/fire hydrant
- Preparation of a Health & Safety Plan which will include measures for decontamination of working personnel and equipment.
- Perform air monitoring for dust with DataRAM, DustTrackII or similar monitoring equipment. Supplies needed for dust suppression must be readily available if and when determined to be necessary.
- Removal of concrete blocks located along the western edge of proposed excavation area. The blocks will be relocated and stacked on a paved area of the property.
- Clearing of trees located within excavation area. Removed trees will be chipped on-site. Tree chippings will be added to existing mulch stockpiles. Trees that cannot be chipped will be removed from the site.
- Relocation of existing stockpile present within proposed excavation area.
- Installation of haybales along the residential property line. The haybales will be placed on excavated edge of fence line following placement of clean fill and berm in that area. Haybales will be placed on top of berm and remain at project completion.
- Preparation of soil stabilization area to encompass an approximate 150'x150' area located on the southern portion of the property. Preparation activities will include the following:
 - An approximate 15'x30' area of petroleum-impacted soil beneath the excavator to be removed and relocated on-site will be excavated to a depth of 6 inches. Stockpiled soils will be placed on and covered with 6-mil polyethylene sheeting. Soils removed from that area will be stockpiled separately on-site while awaiting removal to an approved disposal facility and transported under manifest documentation. Contractor shall sample stockpile for receiving facility requirements. Soil shall be disposed at a permitted RCRA/TSCA facility.

- Additional preparation of the soil stabilization area will include removal of 20'x65'x1' reinforced concrete slab. Slab shall be stockpiled on-site.
- Surround soil stabilization area with staked haybales.
- A layer of non-biodegradable filter fabric with an overlapping 3 foot seams will be placed on 150'x150' soil stabilization area prior to placement of excavated soils.
- Excavation of a 600'x50' area of soil on the former Tombarello Property. Soil will be excavated to a depth of 1 foot below surface grade.
- Relocation of excavated soil on-site to soil stabilization area.
- Stumps that can not be placed in the stabilization area due to size shall be removed off-site with the contaminated soil referenced above.
- Placement of non-biodegradable filter fabric on base of completed excavation with 3 feet overlapping seams.
- Backfilling of excavation with common burrow.
- Loam and hydro-seeding of backfilled excavation area.
- Stabilization of excavated soils on-site. Soil stabilization area will be covered with non-biodegradable filter fabric, followed by 4 inches of loam and hydro-seeded.
- Hydro-seeding additional exposed areas of the Tombarello Property as directed.
- Removal of miscellaneous OHM containers located on the Tombarello Property. Oily solids beneath the OHM storage area will be drummed and removed from the Tombarello Property.
- Placement of appropriate signage indicating that the site is contaminated. Signs will be placed every 100 feet on existing fencing along the western (Marston Street), southern (recreational field) and eastern (Route 495) portions of the property. Signage will be installed on posts every 100 feet along the boundary of the abutting waste management facility. It is anticipated that approximately 25 signs will be placed on existing fencing and approximately 12 signs will be placed on posts along the Waste Management boundary.

3.) Upon receipt of EPA approval, Respondent shall perform the removal activities in accordance with the EPA-approved removal work plan and its schedule.

- a. The soil excavation work (600 foot by 50 foot excavation area) shall be completed on or before May 6, 2011, with the balance of Respondent's on-site activities (other than post-removal site control) to be completed by May 27, 2011.
- b. Respondent shall submit a final report to EPA for review and approval.

The final report shall meet the requirements of Paragraph 30 of the Settlement Agreement

and shall include:

- 1) a brief chronology of all work;
- 2) a discussion of removal and disposal options considered, and an assessment of how the cleanup goals described in the work plan were met, including any deviations;
- 3) a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement;
- 4) appropriate photographs;
- 5) a presentation of the analytical results of all sampling and analytical analyses performed, and all accompanying data and analyses;
- 6) a listing of quantities and types of materials removed off-site or handled on-site;
- 7) all hazardous waste manifests/bills of lading (legible), signed by the appropriate personnel (generator and disposal facility for manifests, generator for bills of lading) and any other applicable disposal documents and a listing of the ultimate destination(s) and disposal methods;
- 8) all relevant documentation generated during the removal action (*e.g.* manifests, invoices, contracts, permits);
- 9) the following certification, signed by a person who supervised or directed the preparation of the report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.”

