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November 7, 2013

Mr. Michael D. Daneker
Arnold & Porter, LLP
555 Twelfth Street, NW
Washington, DC 20004-1206

RE: Atlantic Richfield Company and
ARCO Environmental Remediation, LLC
Site No. 3-60-022
Index No. A3-1111-08-12

Dear Mr. Daneker:

Enclosed for your files is a copy of the fully executed Order on Consent and Administrative Settlement referencing the Harbor-at-Hastings Site.

If you have any further questions or concerning relating to this matter, please feel free to contact either Ben Conlon or myself at 518-402-9510.

Sincerely,



Maria Mastroianni
Legal Assistant
RCRA and Hazardous Waste
Enforcement Bureau

Enclosure

cc: William Ports, Project Manager, DEC
Ben Conlon, DEC
George Heitzman, DEC
Amen Omorogbe, DEC
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NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

**Atlantic Richfield Company and
ARCO Environmental Remediation, LLC,**

Respondents.

**AMENDED
ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index No. A3-1111-08-12

Site No. 3-60-022

WHEREAS,

1. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statutes.
2. The Department is responsible for carrying out the policy of the State of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301, and, together with any payments made by the Respondents hereunder resolves and satisfies Respondents' liability to the State under CERCLA, 42 U.S.C. § 9601 et seq., for remediation of the Site as provided at 6 NYCRR 375-1.5(b)(5) and 375-2.9(a).
4. The Harbor-at-Hastings Site (the "Site") is designated as Class 2 inactive hazardous waste disposal Site No. 360022 and consists of Operable Unit 1 and Operable Unit 2 as described in the March 2012 Record of Decision Amendment for Operable Unit 1 and the March 2012 Record of Decision for Operable Unit 2. The Site is located at 1 River Road, Village of Hastings-on-Hudson, Westchester County, New York. Operable Unit 1 (OU-1) comprises approximately 28 acres of property located above the high tide line and the soils and groundwater beneath it. The Department issued a Record of Decision for OU-1 of the Site on

March 18, 2004 and then issued an amended Record of Decision for OU-1 on March 30, 2012 (hereinafter the "OU-1 ROD" and the "OU-1 Amended ROD"). Operable Unit 2 (OU-2) consists of between 3 and 4 acres of submerged lands below the high tide line, as well as off-Site contamination in the sediments and ecosystem of the Hudson River. The Department issued a Record of Decision for OU-2 of the Site on March 30, 2012 (hereinafter the "OU2-ROD"). Exhibit "A" of this Order is a map showing the Site's general location.

5. For the purposes of this Order on Consent only, Respondents acknowledge that:

A. Anaconda Wire & Cable Company ("AWC") owned and operated a wire and cable manufacturing facility at the Site from approximately 1929 until approximately 1975, when manufacturing ceased. AWC was originally a subsidiary, and later a division, of The Anaconda Company ("Anaconda"). Anaconda sold the Site in 1978. Subsequent owners and operators used the Site for a variety of purposes, including a waste transfer station, a trucking business, and warehouse storage. Hazardous substance contamination was discovered on Site in the late 1980s.

B. Atlantic Richfield Company ("AR") acquired Anaconda in 1977. Certain of AWC's assets and liabilities (except for the Site liabilities) were placed into a joint venture in 1980. AR merged with Anaconda in 1981 and AR sold its interest in the joint venture in 1985. As a result, for the limited purpose of this Order only, AR shall be treated as the successor-in-interest to Anaconda and AWC at this Site.

C. AR's affiliate, ARCO Environmental Remediation, LLC ("AERL"), acquired the Site in 1998 to facilitate the remediation of any contamination associated with AWC's operations on Site. AERL is the current owner and operator of the Site.

6. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 3-60-022 with a Classification "2" pursuant to ECL 27-1 305. The Department, AR and AERL entered into an Order On Consent, dated March 25, 2005, which obligated AR and AERL to implement the ROD for OU-1.

7. The Department asserts that it has and will continue to incur response costs which are not inconsistent with the National Contingency Plan with respect to OU-1 and OU-2 of the Site, and that it has claims against Respondents for recovery of such response costs and further response actions under CERCLA, 42 U.S.C. § 9601 et seq., including 42 U.S.C. § 9607.

8. In 1994, the Hudson Riverkeeper Fund, Inc. ("Riverkeeper") filed a suit styled *Hudson Riverkeeper Fund, Inc. v. Atlantic Richfield Company*, 94 Civ. No. 2741 (WCC) in the United States District Court for the Southern District of New York (the "Riverkeeper Litigation"). Also in 1994, the Village of Hastings-On-Hudson, New York (the "Village") successfully moved to intervene in the Riverkeeper Litigation. AR is the named defendant in the Riverkeeper Litigation. Both Riverkeeper and the Village alleged that AR is liable for environmental conditions at OU-1 of the Site under the Resource Conservation and Recovery Act ("RCRA")

Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), as a person who has contributed to or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. In an amended complaint, the Village also alleged that AR is liable for response costs and response actions under CERCLA, 42 U.S.C. § 9601 et seq.

9. In December 2003, Riverkeeper, the Village, and AR settled the Riverkeeper Litigation through the entry of a Consent Decree in the Southern District of New York ("the Federal Consent Decree"). The Federal Consent Decree requires AR to perform certain remedial activities on OU-1 of the Site.

10. Respondents AR and AERL consent to the Department's issuance of this Order for OU-1 and OU-2 of the Site without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever, or (ii) an acknowledgment that there has been a release or threatened release of hazardous waste while any Respondent owned or operated the Site or that the release or threatened release of hazardous waste at or from the Site constitutes a significant threat to public health or the environment.

11. The Department, AR, and AERL recognize that implementation of this Order will expedite the cleanup of the Site and may avoid prolonged and complicated litigation between the parties, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

12. Solely with regard to the matters set forth below, Respondents hereby waive their right to a hearing herein as provided by law and consent to the issuance and entry of this Order and agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Initial Submittal

Within thirty (30) Days after the effective date of this Order, Respondents shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached hereto. The Records Search Report can be limited if the Department notifies Respondents that prior submissions satisfy specific items required for the Records Search Report.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans. All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order

and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 et seq. The Work Plan(s) under this Order shall address OU-1 and OU-2 conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondents shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Section shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Site Characterization ("SC") Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study;
3. Interim Remedial Measure ("IRM") Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;
4. Remedial Design Work Plan: a Work Plan whose objective is to provide for the development and design of final plans and specifications for implementing the remedial alternative set forth in the ROD; or
5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

III. Remedial Design Work Plan

A. RD Preparation. Respondents shall prepare and submit to the Department a draft Remedial Design Work Plan ("RDWP") for OU-1 and OU-2 of the Site within sixty (60) days after the Effective Date of this Order, which shall, inter alia, propose pre-remedial design activities which may include, but are not limited to, sampling, information gathering, and pilot testing. The RDWP shall be prepared in accordance with relevant EPA and Department guidance documentation, including 6 NYCRR Part 375, and DER-10 Technical Guidance for Site Investigation and Remediation). The RDWP shall propose remedial design activities consistent with the OU-1 Amended ROD and the OU-2 ROD for the Site.

B. RDWP Content. The RDWP shall include, but not be limited to, the following elements:

1. Identification of the additional data required to support the Remedial Design;
2. A Site-specific description of field activities required to support the Remedial Design, which activities may be broken down into one or more distinct projects, together with a schedule for the performance of these activities;
3. If any further sampling on Site is required to support the Remedial Design, the RDWP shall either contain, or set forth a schedule for preparing, a Sampling and Analysis Plan ("SAP") which shall include:
 - (a) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall describe the level of data validation to be performed, identify a data validation expert and describe such individual's qualifications and experience;
 - (b) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the *Compendium of Superfund Field Operations Method* (EPA1540P-87/001), *OSWER Directive 9355.0- 14, (December 1987)* and *Field Methods Compendium*, OSWER Directive 9285.2- 1 1 (draft June 1993), *as amended, and* supplemented by the Department;
4. A plan to secure or maintain physical security and posting of the Site;
5. A health and safety plan ("HASP") upon the approval of the RDWP addressing Remedial Design fieldwork, provided that such health and safety plan includes a community health and safety plan, to protect persons at and in the vicinity of the Site during the Remedial Design. The HASP (other than the community health and safety plan) shall be prepared in accordance with 29 C.F.R. § 1910 by a certified health and safety professional. Respondents shall provide supplements to this Health and Safety Plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site;
6. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication *Citizen Participation Handbook for Remedial Programs*, dated January 2010, any subsequent revisions thereto, and 6 NYCRR Part 375.

7. A narrative description of the Remedial Design, including a description of the remedial goals for the Site, as stated in the Amended ROD for OU-1 and the ROD for OU-2, and the means by which each element of the selected remedial alternative, including any institutional and engineering controls, will be implemented to achieve those goals; and

8. A schedule for the submission of Remedial Design documents that together will form the Remedial Design Contents pursuant to Section IV.

C. Schedule. Once the Department has approved the RDWP, Respondents shall commence the activities authorized therein according to the schedule set forth therein.

D. Performance of RDWP. Respondents shall perform the RDWP activities in accordance with the Department-approved RDWP.

E. Qualified Representative. During the performance of field activities pursuant to the RDWP, Respondents shall have on-Site a representative who is qualified to supervise the work done.

IV. Remedial Design

A. Remedial Design Preparation. In accordance with the schedule for Remedial Design submissions contained in the approved RDWP, Respondents shall prepare and submit to the Department a remedial design to implement the remedial alternative selected by the Department in the Amended ROD for OU-1 and the ROD for OU-2 of the Site (collectively the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order. Documents for the Remedial Design including, but not limited to, drawings and specifications shall also be prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state, and federal laws, rules, and regulations. The Remedial Design may consist of a series of documents in accordance with the approved RDWP, in which case each design document shall be so certified.

B. Remedial Design Content. The Remedial Design shall include the following:

1. A detailed description of the remedial goals for the Site, as set forth in the Amended OU-1 ROD and the OU-2 ROD;
2. A detailed description of each element of the selected remedial alternative contained in the Amended OU-1 ROD and the OU-2 ROD and the means by which such elements will be implemented to achieve the remedial goals for the Site, including, but not limited to:

(a) a summary of findings concerning each pre-design project identified and completed pursuant to the RDWP and Subsection III.B of this Order. Each such summary of findings shall:

- i. include all data generated and all other information obtained during the performance of the RDWP activities;
- ii. identify any additional data that must be collected in order to design and implement the relevant aspect of the remedy pursuant to the Amended OU-1 ROD and the OU-2 ROD and this Order;
- iii. include a certification by the individual or firm with primary responsibility for the day to day performance of the RDWP that all activities that comprised the RDWP were performed in full accordance with the Department-approved RDWP; and
- iv. include a reference to the geographic location of the sample point for all sample data supplied. For samples taken pursuant to the RDWP, such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the National Geodetic Vertical Datum ("NGVD"), 1929 adjustment;

(b) The construction and operation of any structures;

(c) The containment, collection, destruction, treatment, and/or disposal of hazardous wastes, their constituents, and hazardous substances and related degradation products, and of soil or other materials contaminated thereby;

(d) The containment, collection, destruction, treatment, and/or disposal of contaminated groundwater, surface water, leachate and air;

(e) The quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

(f) Monitoring which integrates needs which are present on-Site and off-Site during implementation of the remedial alternative selected in the Amended OU-1 ROD and the OU-2 ROD.

3. A description of how the remedial design meets all applicable or relevant and appropriate regulations, including, but not limited to the fulfillment of the Department's and Respondents' obligations under the New York State Historic Preservation Act.
4. A health and safety plan ("HASP") to protect persons at and in the vicinity of the Site during construction of the Remedial Design, and after construction is complete. The HASP shall be prepared in accordance with 29 C.F.R. 1910 for those provisions addressing workplace health and safety and shall be prepared by a certified health and safety professional. Respondents shall provide supplements to this Health and Safety Plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site;
5. A time schedule to implement the Remedial Design;
6. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design;
7. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;
8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, *Citizen Participation Handbook for Remedial Programs*, dated January 2010, and any subsequent revisions thereto, and 6 NYCRR Part 375.
9. Community and Environmental Monitoring/Response Plan which will combine the elements of a remedial action monitoring plan and the community and environmental response plan found in DER-10.

V. Remedial Construction and Site Management Plan

A. Remedy Implementation. Once the Department has approved a Remedial Design for the Amended OU-1 ROD and the OU-2 ROD ("Approved Remedial Design"), Respondents shall implement the Approved Remedial Design according to any schedule set forth therein. During implementation of all construction activities identified in the Approved Remedial Design, Respondents shall have on Site a representative who is qualified to supervise the work done.

B. Site Management Plan. In accordance with the schedule submitted in the Approved Remedial Design, a detailed post-remedial Site Management Plan shall be submitted to

the Department for review and approval. The Site Management Plan shall consist of the following three elements:

1. An institutional and engineering control plan which details the oversight steps and any media-specific requirements necessary to assure the institutional and/or engineering controls required by the Amended OU-1 ROD and OU-2 ROD to remain in place and effective. This plan shall include, but not be limited to:

(a) A description of all institutional controls, and the engineering controls they are intended to provide for, which are required by the Amended OU-1 ROD and the OU-2 ROD or the environmental easement for the Site;

(b) A copy of the environmental easement that complies with the requirements of Section IX herein imposing the institutional controls on the Site;

(c) Provisions for the annual or periodic certification of the institutional and/or engineering controls;

(d) Appropriate plans for implementation of an institutional control, such as a soil management plan for handling soils removed from beneath a soil cover or cap; and

(e) Any other provisions necessary to identify or establish methods for implementing the institutional controls required by the Site remedy, as determined by Department.

2. The monitoring plan which details the steps necessary to inspect, monitor and report the performance and effectiveness of the remedy, both short and long-term by:

(a) Assessing compliance with actual or equivalent discharge limits;

(b) Assessing achievement of the remedial performance criteria;

(c) Sampling and analysis of appropriate media;

(d) Evaluating Site information periodically to confirm that the remedy continues to be effective for the protection of public health and the environment; and

(e) Preparing necessary reports of the results of this monitoring.

3. The operation and maintenance (“O&M”) plan which meets the remedial goals of the site and details the steps necessary to operate and maintain any treatment, collection or containment systems comprising the remedy for the Site; and, which may include, to the extent the Department determines appropriate, an O&M manual for use at the Site by the operator of the treatment, containment, collection or recovery system in use at the Site.

C. Conformance with Technical Guidance. The Site Management Plan shall conform with DER-10 Technical Guidance for Site Investigation and Remediation. Upon the Department’s approval of the Site Management Plan, Respondents shall implement the Site Management Plan in accordance with the requirements of the Department-approved Site Management Plan.

VI. Final Engineering Report

A. Remedial Construction Certification and Final Engineering Report. Within 120 days after completion of remedial construction activities (or any approved module thereof) identified in the Approved Remedial Design, Respondents shall submit to the Department “as built” drawings, a final engineering report (each including all changes made to the Approved Remedial Design during construction), and a certification by a professional engineer that the Approved Remedial Design was implemented and all construction activities were completed in accordance with the Approved Remedial Design. The “as built” drawings, engineering report, and certification of an approved module of remedial construction activities shall be hereinafter referred to as a Remedial Construction Certification Report. The Remedial Construction Certification Report(s) shall be prepared, signed, and sealed by a professional engineer. The final Remedial Construction Certification Report, which shall also include certifications that all institutional and engineering controls are in place and that all remediation requirements have been or will be achieved, shall be hereinafter referred to as the Final Engineering Report

B. Department Notification of Completion. After receipt of a Remedial Construction Certification Report or Final Engineering Report, the Department shall notify Respondents in writing whether the Department is satisfied that the corresponding construction activities have been completed in compliance with the Approved Remedial Design. If the Department concludes that all remedial activities have been completed in compliance with the Approved Remedial Design, the Department’s written notification will comply with the requirements of Section XV herein.

VII. Modifications to Work Plans and Supplemental Work Plans

A. Modification of Approved Work Plans. The Department shall notify Respondents in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subsection II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondents shall, subject to Respondents' right to terminate pursuant to Section XXI, provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether they will modify the Work Plan, or invoke dispute resolution pursuant to Section XX.

B. Supplemental Work Plans. If the Department concludes that any element of the Remedial Construction fails to achieve the objectives set forth in the Amended OU-1 ROD, OU-2 ROD or the Approved Remedial Design, or otherwise fails to protect human health or the environment, the Department may request that Respondents submit such other, additional, or supplemental Work Plans as are appropriate to advance the Remedial Program at the Site. Within thirty (30) days after the Department's written request, Respondents shall advise the Department in writing whether they will submit and implement the requested additional Work Plan (or Supplemental Work Plan), timely object to the additional Work Plan or Supplemental Work Plan and invoke dispute resolution pursuant to Section XX or elect to terminate this Order pursuant to Section XXI. If Respondents elect to submit and implement such Work Plan, Respondents shall submit a Work Plan providing for implementation of the activities requested within sixty (60) days after such election, unless the Department and Respondents agree, in writing, to an alternative schedule. If Respondents elect to terminate this Order, this Order shall terminate pursuant to Section XXI. If Respondents invoke dispute resolution, any request made by the Department under this Subsection shall be subject to dispute resolution pursuant to Section XX.

C. Respondents' Proposed Supplemental Work Plans. Respondents may, at Respondents' option, propose one or more additional or supplemental Work Plans at any time, which Work Plan(s) shall be reviewed for appropriateness and technical sufficiency.

D. Professional Engineer. A Professional Engineer must stamp and sign all Supplemental Work Plans and any subsequent remedial design and reports.

E. Qualified Representative. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision as set forth in 6 NYCRR Part 375-1.6(a)(3).

F. Final Reports. In accordance with the schedule contained in a Work Plan, Respondents shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final

engineering report as provided at 6 NYCRR 375-1.6(c) regarding the work performed pursuant to the Work Plan. In addition, Respondents shall submit Remedial Construction Certification Report(s) as set forth in Section VI above.

G. As Built Drawings. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design.

VIII. Maintenance of Engineering and Institutional Controls

A. Reporting. In the event that the Final Engineering Report for the Site requires Site Management, Respondents shall submit periodic reports on a frequency and by the dates specified in the Final Engineering Report, or as subsequently modified by the Department,. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3).

B. Petition for Termination or Modification of Controls. Respondents (including their assignees) may petition the Department for a determination that the institutional and/or engineering controls set forth in the Site Management Plan may be terminated or modified. Such petition must be supported by a Professional Engineer stating that such controls are no longer necessary for the protection of public health and the environment or that the modified controls are sufficiently protective of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

C. Notification of Failure of Controls. Until such time as the Department determines that an engineering or institutional control may be terminated, Respondents (or other persons that Respondents may designate with the Department's approval) shall notify the Department within 24 hours upon discovery of any upset, interruption, or termination of any such controls set forth in the Site Management Plan without the prior approval of the Department. During such upset, interruption, or termination of controls, Respondents or their approved designee(s) shall take those actions reasonably required by the Department to mitigate adverse impacts at the Site and that are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by the Site Management Plan, as well as in any progress reports required by Section XI.

IX. Environmental Easement

A. Environmental Easement. If a Department-approved Remedial Design Work Plan for the Site relies upon one or more institutional and/or engineering controls,

Respondents (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of Environmental Easement by the State, Respondents shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

X. Review of Submittals other than Progress Reports and Health and Safety Plans

A. Department Responses to Submittals. The Department shall make a good faith effort to review and respond in writing to each submittal a Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

B. Procedures Upon Department Disapproval. If the Department disapproves a submittal, it shall specify in writing the reasons for its disapproval. Within fifteen (15) Days after Respondent receives the Department's written notice that Respondent's submittal has been disapproved, Respondent shall elect as provided at 6 NYCRR 375-1.6(d)(4), subject to Respondent's right to terminate pursuant to Section XXI in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD Work Plan and Respondent's right to invoke dispute resolution pursuant to Section XX. If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal, unless the Department agrees, in writing, to an extension to the deadline for such submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Section XX and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

C. Procedures Upon Department Approval. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to the Work Plan for which the final report is being submitted, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

XI. Progress Reports

Respondents shall submit written progress reports to the parties identified in Section XV by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in an approved Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to

this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondents in connection with the Site during the reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

XII. Penalties

A. Stipulated Penalties

1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), unless such failure is the result of a Force Majeure Event as set forth in 6 NYCRR 375-1.5(b)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Respondents have agreed that the following stipulated penalties apply in the event of a Respondent's failure to comply with this Order.

Period of Non-Compliance	Penalty Per Day
1 st through 15 th day	\$2,500.00
16 th through 30 th day	\$5,000.00
31 st day and thereafter	\$10,000.00

3. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. Force Majeure

1. Respondents shall not suffer any penalty or be subject to any proceeding or action in the event they cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondents must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondents' economic inability to comply with any obligation, the failure of Respondents to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondents shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall be deemed to know of any circumstance which they, any entity controlled by Respondents, or their contractors knew or should have known.

3. Respondents shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondents complied with the requirements of Subsection VIII.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 375-1.5(b)(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subsection VIII.B, Respondents shall be in violation of this Order unless they invoke dispute resolution pursuant to Section XVI and Respondents' position prevails.

XIII. Entry Upon Site

A. Department Access to Site. Respondents hereby consent, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondents) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying non-privileged records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondents' compliance with this Order. Upon request, Respondents shall (i) provide the Department with suitable work space at the Site, including access to a telephone and internet, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondents are unable to obtain any authorization from third-party property owners necessary to perform their obligations

under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. Right to Sample. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondents shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondents.

XIV. Payment of State Costs

A. Past State Costs. Within sixty (60) days of the effective date of this Order, Respondents shall pay to the Department \$2,729,579.23, which shall represent reimbursement for past State Costs as State Costs are defined at and provided for at 6 NYCRR 375-1.5(b)(3) up to March 27, 2013, all State Costs incurred after that date shall be billed as Future State Costs under this Order.

B. Future State Costs. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondents shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subsection X.A, for work performed at or in connection with the Site through and including the Termination Date, as provided at 6 NYCRR 375-1.5(b)(3). Respondents shall have the rights set forth in 6 NYCRR 375-1.5(b)(3) to review the Department's itemized invoice and contest, in writing, those costs to which Respondents object.

C. Cost Documentation. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Invoice Submittal. Such invoice shall be sent to Respondents at the following address:

Allen Peterson
Atlantic Richfield Company
150 W. Warrenville Rd
Naperville, IL 60563
allen.peterson@bp.com

And

James Lucari, Esq.
Atlantic Richfield Company

c/o BP Legal
150 W. Warrenville Rd
Naperville, IL 60563
james.lucari@bp.com

E. Payment Submittal. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012
Attn: Bureau Director

F. Changes of Address. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Contesting Invoiced Costs. Respondents may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

XV. Release and Covenant Not to Sue

A. Release of Respondents. Upon approval of the Final Engineering Report, the Department shall issue a Certificate of Completion in accordance with 6 NYCRR 375-1.6(c)(6), 375-1.9 and 375-2.9. Respondents shall obtain the benefits conferred by such provisions, including, but not limited to, the release of liability under CERCLA, 42 U.S.C. § 9601 et seq., other than claims, costs or other liabilities related to the assessment or restoration of natural resource damages, subject to the terms and conditions of 6 NYCRR 375-1.9 and 375-2.9 provided, however that all payments made by the Respondent hereunder are for Respondent's liability under CERCLA 42 U.S.C. § 9601 et seq.

B. Covenant Not to Sue. Approval of the final engineering report shall also constitute a covenant not to sue for each and every claim, demand, remedy, or action other than claims, costs or other liabilities related to the assessment or restoration of natural resource damages, against Respondents and each of their directors, officers, employees, agents, servants, successors, and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the Effective Date of this Order), and their respective secured creditors, which the Department has or may have pursuant to Article 27, Title 13 of the ECL or pursuant to

any other state or federal provision of statutory or common law (including CERCLA, 42 U.S.C. § 9601 et seq.) involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Respondents to the Department's satisfaction pursuant to the Amended OU-1 ROD or OU-2 ROD or associated Work Plans). Notwithstanding the foregoing sentence, the Department specifically reserves all of its rights concerning, and any such covenant not to sue shall not extend to claims, liabilities, or costs arising from; (i) any further investigation or remediation the Department deems necessary due to newly discovered environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and which indicate that the Remedial Program is insufficiently protective of human health and the environment; or (ii) the assessment or restoration of natural resource damages.

C. Failure of Respondents. This covenant not to sue shall be null and void, ab initio, in the event of fraud relating to the execution or implementation of this Order or in the event that Respondents fail to materially comply with the provisions of this Order. The Department's determination that Respondents have committed fraud or materially failed to comply with this Order shall be subject to dispute resolution pursuant to Section XX.

D. Limitations. Nothing in this Section XV shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits; causes of action, or demands whatsoever that (i) Respondents may have against anyone other than the Department, and (ii) the Department may have against anyone other than Respondents, their directors, officers, employees, agents, and servants, successors and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the Effective Date of this Order), and their respective secured creditors, prior to the effective date of this Order.

XVI. Reservation of Rights

A. Department's Reservation of Rights. Except for those claims expressly resolved by this Order and subject to the release and covenant not to sue provided in Section XV, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Respondents' Reservation of Rights. This Order on Consent constitutes an administrative settlement resolving Respondents' liability to the Department for response actions with respect to the Site and for all the costs of such actions, including, but not limited to, any rights to contribution within the meaning of 42 U.S.C. § 9613(f)(3)(B). Except as otherwise provided in this Order, Respondents specifically reserve all rights

and defenses under applicable law respecting any Departmental assertion of liability for natural resource damages against Respondents, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondents' compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondents, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondents reserve such rights as they may have to seek and obtain contribution, indemnification, and/or any other form of recovery from insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law.

XVII. Indemnification

Respondents shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

XVIII. Public Notice

A. Recorded Notice. Within thirty (30) Days after the effective date of this Order, Respondents shall provide notice as required by 6 NYCRR 375-1.5(a). Within thirty (30) days of such filing (or such longer period of time as may be required to obtain a certified copy, provided Respondents advise the Department of the status of efforts to obtain same within such thirty (30) days), Respondents shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. Notice Upon Sale or Transfer. If Respondents propose to transfer by sale or lease the whole or any part of Respondents' interest in the Site, or become aware of such transfer, Respondents shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondents to secure the repayment of money or the performance of a duty or obligation.

XIX. Communications

A. Communications Between Parties. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondents shall be sent to:

William Ports, Project Manager
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233
wfports@gw.dec.state.ny.us

Note: two hard copies (one unbound) of work plans and reports are required, as well as two electronic copies.

with copies to:

Krista Anders, Acting Director
Bureau of Environmental Exposure Investigation
New York State Department of Health
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237

Note: one hard copy and one electronic copy of work plans and reports.

Benjamin Conlon, Esq.
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1500
bxconlon@gw.dec.state.ny.us

Electronic copy of correspondence only

George Heitzman
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500
gwheitzm@gw.dec.state.ny.us

Electronic copy of correspondence only

Amen Omorogbe
New York State Department of Environmental Conservation

625 Broadway, 14th Floor
Albany, New York 12233-1500
amomorog@gw.dec.state.ny.us
Electronic copy of correspondence only

2. Communication to be made from the Department shall be sent to:

Paul Johnson
Operations Project Manager
Atlantic Richfield Company
MC 200-1E
150 W. Warrenville Rd
Naperville, IL 60563
paul.johnson4@bp.com

Allen Peterson
Atlantic Richfield Company
MC200-1N
150 W. Warrenville Rd
Naperville, IL 60563
allen.peterson@bp.com

James Lucari, Esq.
Atlantic Richfield Company
c/o BP Legal
150 W. Warrenville Rd
Naperville, IL 60563
james.lucari@bp.com

And

Michael D. Daneker, Esq.
Arnold & Porter LLP
555 Twelfth Street NW
Washington, DC 20004-1206
michael.daneker@aporter.com

B. Changes in Notice. The Department and Respondents reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Procedures for Changes in Notice. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Section XIX or in Section XIV.

XX. Dispute Resolution

In the event disputes arise under this Order, Respondents may, within fifteen (15) Days after Respondents become aware of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondents to invoke dispute resolution with respect to the remedy selected by the Department in the Amended OU-1 ROD or the OU-2 ROD or any element of such remedies, or to impair any right of Respondents to seek judicial review of the Department's selection of any remedy.

XXI. Termination of Order

A. Termination. This Order will terminate upon the earlier of the following events:

1. Respondents' election to terminate pursuant to Section VII, so long as such election, if made under Subsection VII.A, is made prior to the Department's approval of the RD Work Plan or after the Department's approval of the Remedial Construction Certification and Final Engineering Report. In the event of termination in accordance with Section VII, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification terminating this Order, provided, however, that if there are one or more Work Plan(s) with respect to which there is no dispute between Respondents and the Department and for which the work has been partially or fully performed but a final report has not been approved at the time of Respondents' notification of its election to terminate this Order pursuant to Section VII, Respondents shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all such previously approved Work Plans; or
2. The Department's written determination that Respondents have completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Survival of Certain Provisions. Notwithstanding the foregoing, the provisions contained in Sections XXII and XIV shall survive the termination of this Order and any violation of such surviving Sections shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondents to penalties as provided under Section XII so long as such obligations accrued on or prior to the Termination Date.

C. Effect of Termination. If the Order is terminated pursuant to Subsection XXI.A.1, neither this Order nor its termination shall affect any liability of Respondents for

remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondents. Respondents shall also ensure that they do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondents for any further activities to be undertaken as part of a Remedial Program for the Site.

XXII. Respondents' Transfer of Remediation Obligations

A. Right to Pursue Remedial Obligation Contract. Nothing in this Order shall limit Respondents' ability to enter into a contract ("Remediation Obligation Contract") with a third party or parties assignees (hereinafter "Remediation Assignees"), at any time after the date of this Order, pursuant to which Respondent assigns, and the Remediation Assignees assume, responsibility for a portion or all of Respondents' responsibilities under this Order, including the performance of remediation activities at the Site.

B. Procedures for Remedial Obligation Contract. At least ninety (90) days prior to entering into a Remediation Obligation Contract, Respondents shall notify the Department of their intention to enter into such a contract and shall provide the Department with the following information:

1. The names of the proposed Remediation Assignees, and information regarding the Remediation Assignees' financial strength, qualifications, and remediation expertise related to the remedial obligations under the Order;
2. The proposed terms of the Remediation Obligation Contract; and
3. Information regarding insurance, bonding, or other financial assurance mechanisms associated with the Remedial Obligation Contract, if any.

C. Substitution of Remedial Assignees. No later than thirty (30) days prior to the entry into the Remediation Obligation Contract, the Department shall, in writing, inform Respondents as to whether:

1. The Department is satisfied that the Remediation Assignees, under the proposed terms of the Remedial Obligation Contract, have sufficient financial strength, expertise and qualifications such that the Remediation Assignees may be added as primary Respondents on this Order.

(a) In the event that the Department elects to proceed under Subsection XXII.C.1, the Remedial Assignees shall be added as additional parties to this Order, and the Department shall look to the Remedial Assignees in the first instance to perform all of Respondents' obligations hereunder. Respondents shall remain responsible for Respondents' obligations under the Order and shall perform such obligations only upon receipt of written notice to Respondents that the Remedial Assignees (i) are in material breach of this Order and, (ii) after having been provided reasonable notice and opportunity to cure such breach by the Department, have failed to do so. Further, the Release and Covenant not to Sue provided in Section XV of this Order shall extend and apply equally to both Remedial Assignees and Respondents.

2. The Department requires additional terms in the Remedial Obligation Contract, which, if adopted, would satisfy the Department that the Remediation Assignees have sufficient financial strength, expertise and qualifications such that the Remediation Assignees may be added as primary Respondents on this Order; provided, however, that the decision to adopt such terms remains the sole discretion of Respondents.

(a) In the event that the Department elects to proceed under Subsection XXII.C.2, Respondents shall notify the Department as to whether the additional terms required by the Department have been incorporated into Remediation Obligation Contract.

(b) Provided that Respondents have incorporated such additional terms into the Remedial Obligation Contract, the Remedial Assignees shall be added as additional parties to this Order, and the Department shall look to the Remedial Assignees in the first instance to perform all of Respondents' obligations hereunder. Respondents shall remain responsible for Respondents' obligations under the Order and shall perform such obligations only upon receipt of written notice to Respondents that the Remedial Assignees (i) are in material breach of this Order and, (ii) after having been provided reasonable notice and opportunity to cure such breach by the Department, have failed to do so. Further, the Release and Covenant not to Sue provided in Section XV of this Order shall extend and apply equally to both Remedial Assignees and Respondents.

(c) If Respondents decline to incorporate such additional terms as the Department may require into the Remedial Obligations Contract, they shall notify the Department within fifteen (15) days prior to entry into the

Contract, and the Department shall promptly notify Respondents as to whether it elects to proceed under Subsections XXII.C.1 or XXII.C.3.

3. The Department has reasonably formed a good faith belief that the Remedial Assignees do not have sufficient expertise and qualifications to perform the remedial activities under this Order and may not be added as parties to the Order.

(a) If the Department elects to proceed under Subsection XXII.C.3, the Remedial Assignees shall not be added as parties to the Order, and Respondents shall remain responsible for all of Respondents obligations (and shall obtain all of Respondents' benefits) under this Order.

XXIII. Trust Fund

A. Trust Fund Proposal. At any time after submittal of the Remedial Design to the Department, Respondents may elect to propose to the Department that a Trust Fund ("Trust") be established within or outside the provisions of 26 C.F.R. § 1.468B-1 (Qualified Settlement Fund"). Respondents' proposal shall specify:

1. The name of the trustee for the proposed Trust, and information regarding the qualifications, and expertise of the Trustee;
2. The proposed terms of the Trust, including the amount of funds to be placed therein; the conditions upon which expenditures may be made out of the Trust, the rights, duties, obligations, and qualifications of the Trustee, and the terms governing the disposition of the remainder of any funds once all remedial obligations under this Order have been satisfied.
3. Further information regarding the operation of the Trust as may be relevant to the performance of Respondents' obligations hereunder; and
4. Whether Respondents seek to substitute the Trust for Respondents on the Order such that Respondents will have been deemed to fulfill their obligations hereunder (and thereby to be granted the release and covenant not to sue pursuant to Sections XV).

B. Department's Consideration. The Department shall cooperate in good faith with Respondents to assess whether any such proposed Trust is a viable mechanism for fulfilling Respondents' obligations under this Order. Any decision as to whether to substitute such a Trust for Respondents on this Order, or whether to grant Respondents the release and covenant not to sue pursuant to Section XV as a result of the funding of the Trust shall be by mutual agreement of the Parties hereto, and shall be memorialized

by a written modification to this Order, signed by the Respondents, the Trustee, and the Department.

XXIV. Miscellaneous

A. Compliance with Part 375. Respondents agree to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2, and to follow the remedial guidance set forth in DER-10 Technical Guidance for Site Investigation and Remediation. The provisions of such Subparts of 6 NYCRR Part 375 that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. Respondents' Access to Site. Respondents shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondents' obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondents' best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondents shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondents in obtaining same. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondents to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondents' inability to obtain such interest.

C. State and Local Permit Exemptions. The Department may exempt Respondents from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

D. Paragraph Headings. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. Complete Agreement. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondents concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondents of Respondents' obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and

any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondents consent to and agree not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

F. Modifications to Order and Work Plans

1. Except as set forth herein, if a Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Section XIX.
2. If a Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Section XIX. Such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondents within 60 days.
3. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondents promptly.

G. Application of the Term "Respondent"

1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural. The obligations of each such party under this Order are joint and several and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.
2. If any Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.
3. Notwithstanding the foregoing Subsections XVIII.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no

obligations under this Order relative to the activities set forth in such Work Plan(s)..

G. Resolution of CERCLA Liability. To the extent authorized under 42 U.S.C. § 9613, New York General Obligations Law § 15-108, 6 NYCRR 375-1.5(b)(5), and any other applicable law, by entering into and complying with this Consent Order, Respondents shall be deemed to have resolved their liability under CERCLA to the State for “matters addressed” pursuant to and in accordance with this Order. “Matters addressed” in this Order shall mean all response actions taken by Respondents to implement this Order and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by Respondents, including reimbursement of State Costs pursuant to this Order.

H. Statutory and Regulatory Definitions of Terms. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Response Costs Do Not Constitute Penalties. Respondents’ performance of remedial obligations under this Order and payment of State Costs represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Successors and Assigns. Respondents and Respondents’ successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondents shall in no way alter Respondents’ responsibilities under this Order, except as stated in Section VI.

K. 2005 Order Superseded. This Order replaces and supersedes the 2005 Order on Consent and Administrative Settlement (Index No.W3-1000-04-05), by and between the Department and Respondents with respect to Operable Unit 1 of the Site and that 2005 Order shall be of no further force and effect.

L. Execution in Counterparts. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

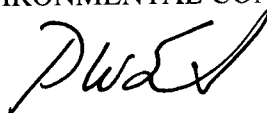
M. Effective Date. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner’s designee.

DATED:

NOV 06 2013

JOSEPH MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT AR

Respondent hereby consents to the issuing and entering of this Order, waive Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: _____

Title: _____

Date: _____

[Handwritten Signature]

Marcus R. Ferrer

VICE PRESIDENT - ATLANTIC RAILROAD COMPANY

OCT. 28, 2013

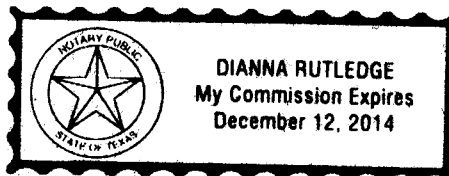
STATE OF *Texas*)

) ss:

COUNTY OF *Harris*)

On the 28 day of October, in the year 2013, before me, the undersigned, personally appeared Marcus Ferrer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Dianna Rutledge
Signature and Office of Individual
Taking Acknowledgment



CONSENT BY RESPONDENT AERL

Respondent hereby consents to the issuing and entering of this Order, waive Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: [Signature]

Marcus P. Ferrer J

Title: VICE PRESIDENT

Date: OCT. 28, 2013

STATE OF Texas)

) ss:

COUNTY OF Harris)

On the 28 day of October, in the year 2013, before me, the undersigned, personally appeared Marcus Ferrer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Dianna Rutledge
Signature and Office of Individual
Taking Acknowledgment

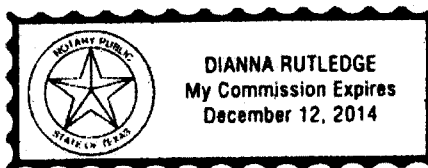


EXHIBIT “A”

Map of Site

EXHIBIT "B"
RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.
2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.
3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:
 - (i) a history and description of the Site, including the nature of operations;
 - (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
 - (iii) a description of current Site security (i.e. fencing, posting, etc.); and
 - (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.
 - (v) any information obtained in relation to litigation with any other potential responsible parties for the site.