



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

JUN - 2 2014

OFFICE OF  
COMPLIANCE AND ENFORCEMENT

Reply to: OCE-082

**Certified Mail Number - Return Receipt Requested**

Stanley Speaks  
Regional Director  
Bureau of Indian Affairs  
Northwest Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4169

Re: Administrative Order on Consent: EPA Docket No. RCRA-10-2014-0052  
Leaking Underground Storage Tank at the Former Signal Peak Ranger Station  
EPA UST Facility ID No. 4260128 – Yakama Indian Reservation

Dear Mr. Speaks:

Enclosed is a conformed copy of the Administrative Order on Consent (AOC) negotiated between the U.S. Air Force and the U.S. Environmental Protection Agency, Region 10, in the matter referenced above.

Please contact David Domingo at 206-553-2456, if you have any questions concerning implementation of the AOC. You may also contact Gracie Pendleton, Assistant Regional Counsel, at 202-564-2588 with any legal questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski  
Director

Enclosure

cc: Bob Blaesing  
Bureau of Indian Affairs

Steve Wangemann  
Bureau of Indian Affairs

Elizabeth Sanchez  
Yakama Nation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

In the Matter of: )  
)  
U.S. BUREAU OF INDIAN AFFAIRS ) Docket No. RCRA-10-2014-0052  
SIGNAL PEAK RANGER STATION )  
YAKAMA INDIAN RESERVATION ) ADMINISTRATIVE ORDER ON  
) CONSENT  
Respondent. )  
)  
) Proceeding under Section 9003(h)  
) of the Resource Conservation and  
) Recovery Act, 42 U.S.C. § 6991b(h)  
)  
\_\_\_\_\_ )

**I. JURISDICTION**

1.1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the U.S. Bureau of Indian Affairs (“Respondent”) and is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 6001(b), 9003(h), and 9007 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6961(b), 6991b(h), and 6991f. The Administrator has delegated the authority to sign this Order to the Regional Administrator, Region 10, who in turn has re delegated this authority to the Director of the Office of Compliance and Enforcement.

1.2. This Order is issued to Respondent, the owner and operator of the underground storage tanks (“USTs”) located at the Signal Peak Ranger Station on the Yakama Indian Reservation (“Site”), where releases of regulated substances necessitating the corrective action

described herein occurred.

1.3. Respondent consents to and agrees not to contest EPA's jurisdiction or authority to enter into or enforce this Order. Respondent agrees not to contest the validity of any terms or conditions of this Order in any action to enforce, or any action arising from, this Order.

## **II. STATEMENT OF PURPOSE**

2. In entering this Order, the mutual objectives of EPA and Respondent are that Respondent will take the following actions to adequately protect human health and the environment: 1) develop and submit to EPA a Site Assessment Plan to determine the nature and extent of the release from USTs of petroleum constituents at or from the Site; 2) develop and submit to EPA a Site Investigation Report that describes the results of the site assessment; 3) develop and submit to EPA a Corrective Action Plan to identify and evaluate alternatives and select the preferred alternative for corrective action necessary to prevent or mitigate any migration or releases of petroleum constituents at or from the Site, including a schedule for implementing the Corrective Action Plan; and 4) implement the Corrective Action Plan at the Site as approved or modified by EPA after the Corrective Action Plan is approved by EPA.

## **III. PARTIES BOUND**

3.1. This Order shall apply to and be binding upon EPA; Respondent; Respondent's officers, directors, employees, agents, successors and assigns; and all persons including, but not limited to, contractors and consultants acting on behalf of Respondent.

3.2. No change in ownership status relating to the Site will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Site shall not affect Respondent's obligations under this Order. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform any such tasks.

3.3. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within 30 days of the effective date of this Order or date of such retention, whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

3.4. Respondent shall give written notice of this Order to the current owner of the Site and any successor in interest should transfer of ownership or operation of the Site occur prior to completion of all activities under this Order, and shall notify EPA within 30 days of providing such written notice.

3.5. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference. Respondent waives any right to request a hearing on this matter pursuant to Section 9006(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing pursuant to Section 9006(b)

of RCRA as a Consent Order issued pursuant to Section 9003(h). Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

#### **IV. FINDINGS OF FACT**

4.1. Respondent is a division of the Department of the Interior and, therefore, is a department of the United States.

4.2. At all times relevant to this Order, Respondent was the owner and/or operator of at least two USTs at the Site.

4.3. The Site is located within the external boundary of the Yakama Indian Reservation where EPA is the “implementing agency” for the UST program as that term is used in 40 C.F.R. Part 280.

4.4. The site is located in the closed area of the Yakama Indian Reservation on land that is owned by the United States. The site was used by Respondent as a ranger station from the 1930s until the 1970s. At no time has the Yakama Nation owned or operated any UST related to this Order.

4.5. The presence of two federally-regulated USTs was documented at the Site during environmental site assessments conducted in 2003, 2006, and 2008.

4.6. UST-1 was a concrete and wood-lined sump measuring approximately 4 feet by 4 feet by 50 inches. UST-1 was located adjacent to Building 415 and was used to dispose of waste oil from generator maintenance. UST-1 was removed during field activities in September 2008.

4.7. UST-2 is a tank measuring approximately 4 feet in diameter and 9 feet long. UST-2 was discovered at the southwest corner of Building 407 during the 2008 field activities. It contained approximately three feet of liquid. Testing in 2008 revealed no Contaminants of Potential Concern in UST-2 at that time. The age and use of UST-2 is unknown. UST-2 has not been permanently closed and remains in the ground.

4.8. In July 2003, Respondent performed a site investigation at the Site and noted visual evidence of oil-contaminated soil near UST-1.

4.9. In October 2006, Respondent's contractor, Cherokee General Corporation ("Cherokee"), conducted an initial site characterization at the Site and identified at least eight areas of recognized environmental concern. Two of the areas of concern were the areas surrounding the two USTs. At the time of the site characterization it was assumed that UST-2 had been removed in the 1970s.

4.10. During the 2006 site characterization, the contents of UST-1 were pumped out and five borings were drilled in the vicinity. Analytical data revealed the presence of total petroleum hydrocarbons ("TPH") above Washington Model Toxics Control Act ("MTCA") cleanup levels. EPA uses MTCA cleanup levels as a guide for determining appropriate cleanup levels for petroleum releases in Indian Country in Washington State. MTCA cleanup levels for TPH in soil are as follows: TPH in the diesel range ("TPH-D"), 2,000 milligrams per kilogram (mg/kg); TPH in the gasoline range ("TPH-G"), 100 mg/kg; and TPH in the heavy oil range

(“TPH-O”), 2,000 mg/kg. The highest concentrations of TPH detected in soil collected from these soil borings were TPH-D, 8,560 mg/kg, and TPH-O, 29,800 mg/kg.

4.11. During the 2006 site characterization, six soil borings were drilled near UST-2. Analytical data revealed the presence of TPH above MTCA cleanup levels. The highest concentrations of TPH detected in soil collected from these soil borings were TPH-D, 3,800 mg/kg; TPH-G, 841 mg/kg; and TPH-O, 14,500 mg/kg.

4.12. In September 2008, Cherokee performed additional site characterization and cleanup actions. Building 415 was razed and approximately 590 cubic yards of petroleum-contaminated soil (PCS) was excavated near UST-1. PCS excavation was halted to avoid compromising the structural integrity of Building 407; however, sampling results indicated that further contamination extended beneath Building 407. The highest concentrations of TPH detected in soil collected from the excavation side walls were TPH-D, 22,200 mg/kg; TPH-G, 922 mg/kg; and TPH-O, 8,060 mg/kg.

4.13. During the 2008 field work, UST-2 was discovered while removing conveyance piping associated with an aboveground storage tank. Four test pits were excavated near UST-2 to determine the presence of petroleum contamination in the area. The highest concentrations of TPH detected in soil collected from the test pits were TPH-D, 7,670 mg/kg; TPH-G 848, mg/kg; and TPH-O, 4,630 mg/kg.

## **V. CONCLUSIONS**

Based on the Findings of Fact set out above, and after consideration of the administrative record, the Director of the Office of Compliance and Enforcement, EPA Region 10, makes the following conclusions of law and determinations:

- 5.1. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
- 5.2. Respondent is the “owner” and/or “operator” of at least two “underground storage tanks,” as these terms are defined in Section 9001(3), (4), and (10), of RCRA, 42 U.S.C. § 6991(3), (4), and (10), and 40 C.F.R. § 280.12, at the Site.
- 5.3. There has been a release of petroleum into the environment from the USTs at the Site.
- 5.4. The actions required by this Order are necessary to adequately protect human health and the environment within the meaning of Section 9003(h) of RCRA.

## **VI. WORK TO BE PERFORMED**

Pursuant to RCRA Section 9003(h)(4), 42 U.S.C. § 6991b(h)(4), Respondent agrees and is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with Subtitle I of RCRA, 42 U.S.C. § 6991 *et seq.*, and its implementing regulations at 40 C.F.R. Part 280, and with relevant EPA guidance documents. EPA shall approve the submittals required in this section in accordance with the Approval and Public Comments sections below.

6.1. Within 30 days of awarding the contract, Respondent shall pump and analyze the contents of UST-2 and dispose of the contents in an appropriate manner.

6.2. Within 75 days of the effective date of this Order, Respondent shall develop and submit for EPA review, comment, and approval a Site Assessment Plan (“SAP”). The SAP shall include a schedule of implementation and shall describe how Respondent will determine the nature and extent of the release of petroleum constituents in soil and groundwater from the USTs at or from the Site. The SAP shall also include a plan for permanently closing UST-2.

6.3. Upon EPA’s full approval of the SAP, Respondent shall implement the approved SAP in accordance with its requirements, specifications, and schedule.

6.4. Within 60 days of completion of the implementation of the approved SAP, Respondent shall develop and submit for EPA review, comment, and approval a Site Investigation (“SI”) Report.

6.5. Within 90 days of approval of the SI Report, Respondent shall develop and submit for EPA review, comment, and approval a proposed Corrective Action Plan (“CAP”). The CAP shall include a schedule of implementation and shall describe how Respondent will complete the following:

- a) Develop one or more corrective action alternatives which will respond to the contamination and will permanently mitigate and abate the releases of petroleum at the Site; and
- b) Achieve applicable remediation standard levels for soil and groundwater at the Site.

6.6. Upon EPA's full approval of the CAP after the public comment process described in Section VIII, Respondent shall implement the approved CAP in accordance with its requirements, specifications, and schedule.

**VII. AGENCY APPROVALS/SUBMITTALS/PROPOSED CONTRACTOR OR CONSULTANT/ADDITIONAL WORK**

**EPA APPROVALS**

7.1. EPA shall provide Respondent with its written approval, approval with conditions, or disapproval for any plan, report (except progress reports), or other item submitted pursuant to or required by this Order. EPA shall provide a written statement of reasons for any approval with conditions or disapproval.

7.2. Approval of the CAP is conditioned upon the outcome of the public comment process set forth in Section VIII below.

7.3. Respondent shall revise any submittal in accordance with EPA's written comments. Respondent shall submit to EPA any revised submittals within thirty (30) days of receipt of EPA's written comments. Revised submittals are subject to EPA approval, approval with conditions, or disapproval.

7.4. Upon receipt of EPA's written approval, Respondent shall take all actions required by any approved plan, report, or other document in accordance with the schedule and provisions contained therein.

7.5 Any EPA-approved submittal shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

#### SUBMITTALS

7.6 Beginning with the first full month following the effective date of this Order, and throughout the period that this Order is effective, Respondent shall provide EPA with quarterly progress reports by the 15th of the months of March, June, September, and December.

7.7 All documents submitted pursuant to this Order shall be hand-delivered; sent by certified mail, return receipt requested; sent electronically via email; or sent by overnight express mail to the Project Coordinator or to other addressees she/he designates.

#### PROPOSED CONTRACTOR/CONSULTANT

7.8 All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist with expertise in petroleum cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within 45 days of the effective date of this Order, Respondent shall notify the EPA Project Coordinator, in writing, of the name, title, and qualifications of the engineer, hydrologist, geologist, or environmental scientist and of any contractors or consultants and their personnel who will be carrying out the terms of this Order. Respondent shall identify whether any contractor is on the list of parties excluded from federal procurement or non-procurement

programs (“Excluded Parties List”) compiled under 2 C.F.R. Parts 180 and 1532 and 48 C.F.R.

§ 9.4. EPA reserves the right to disapprove Respondent's contractor and/or consultant. If EPA disapproves a contractor or consultant, then Respondent must, within 30 days of receipt from EPA of written notice of disapproval, notify EPA, in writing, of the name, title, and qualification of any replacement. EPA's disapproval shall not be subject to review under Section XVI:

Dispute Resolution.

#### ADDITIONAL WORK

7.9. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any EPA-approved CAP, when such additional work is necessary to meet the purposes set forth in Section II: Statement of Purpose. EPA shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for EPA's determination that the additional work is necessary. Within 30 days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. Such work plan shall be submitted within 30 days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a work plan, Respondent shall implement it in accordance with the schedule and provisions contained herein. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Order.

## **VIII. PUBLIC COMMENT AND PARTICIPATION**

8.1. Following EPA's conditional approval of the proposed CAP, EPA shall make the proposed CAP available to the public for review and comment in accordance with the requirements of 40 C.F.R. § 280.67.

8.2. If the proposed CAP is not unconditionally approved by EPA after consideration of public comments, EPA shall inform Respondent in writing of the reasons for such decision, and if required, a due date for a revised CAP. Respondent shall resubmit a revised CAP in accordance with the Approvals section above.

8.3. In the event of disapproval of the proposed CAP after the public comment period, EPA has the discretion to hold a public comment period for the revised CAP.

8.4. EPA shall ensure that site release information and decisions concerning the proposed CAP are made available to the public for review upon request.

8.5. EPA shall provide public notice if implementation of the approved CAP does not achieve the established cleanup levels in the CAP and EPA is considering terminating the CAP anyway.

## **IX. QUALITY ASSURANCE**

9.1. Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures as specified in the approved CAP.

9.2. Respondent shall follow EPA guidance for sampling and analysis contained in the document entitled "RCRA Ground-Water Monitoring: Draft Technical Guidance," November 1992, and MTCA to guide cleanup decision-making at the Site. Additional applicable guidance documents include various ASTM standards such as E1903-97 (Phase II Site Assessments), E1912-98 (Accelerated Site Characterization), and E1689-95 (Developing Conceptual Site Models).

9.3. Respondent shall consult with EPA in planning for, and prior to, field sampling and laboratory analysis.

9.4. Respondent shall inform the EPA Project Coordinator in advance of the names of the laboratories that will be used and ensure that EPA personnel and authorized representatives have reasonable access to the laboratories and personnel used for analyses.

9.5. Respondent shall ensure that laboratories used for analyses perform such analyses according to EPA methods or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, then Respondent shall submit all protocols to be used for analysis to EPA for approval at least 30 days prior to the commencement of the analyses.

9.6. Respondent shall ensure that laboratories used for analysis participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

## **X. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

10.1. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent, in accordance with the requirements of this Order.

10.2. Respondent shall notify EPA at least 30 days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representative to take split, duplicate, or replicate samples of all samples collected by Respondent pursuant to this Order.

## **XI. ON-SITE AND OFF-SITE ACCESS**

11.1. Respondent shall assure that EPA, its contractors, its employees, and/or any other EPA representatives are authorized to enter and freely move about the Site pursuant to this Order for the purposes of, *inter alia*: interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; conducting such tests, sampling, or monitoring as EPA deems necessary; using a camera, sound recording, or other documentary-type equipment; and verifying the reports and data submitted to EPA by Respondent. Respondent agrees to assure in the site access agreement(s), described in Paragraph 11.2 below, that EPA and its representatives are provided with access at all reasonable times to the Site and to any other property to which access is required for implementation of this Order. Respondent shall permit such persons to inspect and copy all records, files, photographs, and documents, including all sampling and

monitoring data that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondent or its contractors or consultants.

11.2. To the extent that work required by this Order, or by any approved CAP prepared pursuant to this Order, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements from the present owner(s) of such property within 30 days of approval of the CAP for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of the property requesting access agreements granting Respondent and EPA and its authorized representatives access to the property. Any such agreement shall be incorporated by reference into this Order. In the event that agreements for access are not obtained within 30 days of the effective date of approval of the CAP, Respondent shall notify EPA in writing within 15 days thereafter regarding both its efforts to obtain access and its failure to obtain the agreements. In the event that EPA subsequently obtains access to that property, Respondent shall undertake EPA-approved work on such property.

11.3. Nothing in this Section limits or otherwise affects EPA's right of access and entry pursuant to all applicable law.

## **XII. RECORD PRESERVATION**

12. Respondent shall preserve during the pendency of this Order and, for a minimum of six years after its termination, all data, records, and documents in its possession or in possession of its officers, employees, agents, contractors, and assigns which relate in any way to

this Order. Respondent shall make such records available to EPA for inspection or provide copies of such records to EPA, upon request. Respondent shall notify EPA 30 days prior to the destruction of any such records and shall provide EPA with the opportunity to take possession of such records.

### **XIII. PROJECT COORDINATOR**

13.1. Within 15 days of the effective date of this Order, Respondent shall designate a Project Coordinator and notify EPA in writing of the Project Coordinator it has selected.

13.2. The designated EPA Project Coordinator is David Domingo who can be reached as indicated in Section XIV, below.

13.3. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Coordinators.

13.4. The parties shall provide each other with at least 15 days' written notice prior to changing Project Coordinators.

### **XIV. NOTIFICATIONS AND DOCUMENT CERTIFICATION**

14.1. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to the following:

Documents to be submitted to EPA shall be sent to:

David Domingo  
U.S. EPA Region 10  
Office of Compliance and Enforcement  
Ground Water Unit  
1200 6th Ave, Suite 900, OCE-082  
Seattle, WA 98101

Documents to be submitted to Respondent shall be sent to:

Bob Blaesing  
Bureau of Indian Affairs – Portland Office  
911 NE 11<sup>th</sup> Avenue  
Portland, OR 97232

14.2. Any report or other document submitted by Respondent pursuant to this Order which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a responsible officer of the Bureau of Indian Affairs.

14.3. The certification required by Paragraph 14.2 above must be in the following form:

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portions of this submittal for which I cannot verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such persons, the information submitted is, to the best of my knowledge and belief, 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.

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

15.1. Unless there has been a written modification by EPA of a compliance date, a written modification by EPA of an approved work plan condition, or excusable delay as defined in the "Force Majeure and Excusable Delay" provision below, if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below upon written demand by EPA.

Period of Violation	Penalty Per Violation Per Day
First 7 days	\$2,000
8th through 21st day	\$5,000
Each day thereafter	\$10,000

15.2. Penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate violations of this Order. Penalties shall continue to accrue regardless of whether EPA has notified Respondent of a violation.

15.3. All penalties owed to the United States under this section shall be due and payable within 30 days of Respondent's receipt from EPA of a written demand for payment of the

penalties, unless Respondent invokes the dispute resolution procedures under Section XVI. Such a written demand will describe the violation and will indicate the amount of penalties due.

15.4. All penalties shall be paid by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer, automated clearinghouse, or on-line in accordance with instructions provided by EPA. Copies of all checks and letters forwarding the check or other documentation of payment must be sent simultaneously to the EPA Project Coordinator.

15.5. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures in Section XVI. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties in accordance with the dispute resolution decision and/or agreement. Respondent must submit such payment to EPA within seven days of receipt of such resolution in accordance with Paragraphs 15.3 and 15.4 above.

15.6. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Order.

15.7. The stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Order.

#### **XVI. DISPUTE RESOLUTION**

16.1. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order.

16.2. If Respondent disagrees, in whole or in part, with any written decision by EPA pursuant to this Order (Initial Written Decision), Respondent's Project Coordinator shall notify the EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

16.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the EPA Project Coordinator. This written notice must be mailed to such person within 14 days of Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. If Respondent fails to follow any of the requirements contained in this paragraph, then it shall have waived its right to further consideration of the disputed issue.

16.4. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute through formal negotiations. This time period (Negotiation Period) may be extended by EPA for good cause. During the Negotiation Period, Respondent may request a conference with the Director of the Office of Compliance and Enforcement, EPA Region 10, to discuss the dispute and Respondent's objections. EPA agrees to confer in person or by telephone to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the Negotiation Period.

16.5. If the parties are unable to reach an agreement within the Negotiation Period, the Director of the Office of Compliance and Enforcement in EPA Region 10 shall provide to Respondent a written decision on the dispute (EPA Dispute Decision). Such decision is final and shall be incorporated into and become an enforceable element of this Order.

16.6. Except as provided in Section XV. Delay in Performance/Stipulated Penalties, the existence of a dispute as defined in this section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

#### **XVII. FORCE MAJEURE AND EXCUSABLE DELAY**

17.1. Force Majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including, but not limited to, Respondent's contractors and consultants, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best

efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential Force Majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force Majeure does not include increased costs of the work to be performed under this Order or financial inability to complete the work, subject to the provisions in Section XXIII. Funding.

17.2. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a Force Majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Coordinator or, in the event EPA's Project Officer is unavailable, the Director of the Office of Compliance and Enforcement, EPA Region 10, within 48 hours of when Respondent first knew or should have known that the event might cause a delay. Within five days thereafter, Respondent shall provide to EPA, in writing, the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the Force Majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; 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 it intends 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. Respondent shall include with any notice all available documentation supporting

its claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of Force Majeure for that event. Respondent shall be deemed to have notice of any circumstances of which its contractors or consultants had or should have had notice.

17.3. If EPA determines that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of such obligation under this Order that is affected by the Force Majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the Force Majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the Force Majeure event.

17.4. If EPA disagrees with Respondent's assertion of a Force Majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XVI. Dispute Resolution. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstance, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with

the requirements of this section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

### **XVIII. RESERVATION OF RIGHTS**

18.1. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, without limitation, the assessment of penalties under Section 9006 of RCRA, 42 U.S.C. § 6991e. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under RCRA or any other statutory, regulatory, or common law authority of the United States.

18.2. EPA reserves the right to disapprove work performed by Respondent pursuant to this Order and to request that Respondent perform additional tasks.

18.3. EPA reserves the right to perform any portion of the work consented to herein or any additional work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under RCRA to undertake response actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

18.4. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of regulated substances, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this Order for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

18.5. This Order is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that EPA's approval of any final work plan does not constitute a warranty or representation that the work plan will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

18.6. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including, without limitation, decisions of the Regional Administrator, the Director of the Office of Compliance and Enforcement, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

18.7. In any action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.

18.8. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Site, Respondent shall not assert,

and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

#### **XIX. OTHER APPLICABLE LAWS**

19. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XX. MODIFICATION**

20.1. Any requests for a compliance date modification or revision of an approved work plan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or work plan revision. EPA has no obligation to approve such requests but, if it does so, such approval must be in writing. Any approved compliance date or work plan modification shall be incorporated by reference into this Order.

20.2. If EPA determines that compliance date modifications of work specified in the approved work plan(s) or other reports developed pursuant to this Order are necessary to carry out and maintain the effectiveness of the corrective action set forth in this Order, EPA may require that such modification be incorporated in the appropriate work plan(s) and reports. Respondents shall implement any work required by any modifications incorporated in any work plans or other reports developed pursuant to this Order.

## **XXI. SEVERABILITY**

21. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

## **XXII. TERMINATION AND SATISFACTION**

22. The provisions of this Order shall be deemed satisfied upon Respondent's and EPA's execution of an Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights ("Acknowledgment"). EPA will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation (1) to preserve all records, and (2) to recognize EPA's reservation of rights, in accordance Sections XII and XVIII of the Order after the rest of the Order is satisfactorily completed.

## **XXIII. FUNDING**

23.1. It is the expectation of EPA and Respondent that all of Respondent's obligations arising under this Order will be fully funded. Respondent agrees to use every available mechanism to seek sufficient funding through the budgetary process to fulfill its obligations under this Order.

23.2. Any requirement for the payment or obligation of funds by Respondent established by the terms of this Order shall be subject to the availability of appropriated funds. Provisions herein shall not be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this Agreement.

23.3. If appropriated funds are not available to fulfill Respondent's obligations under this Agreement, EPA reserves the right to take any action which would be appropriate absent this Agreement.

#### **XXIV. SUBMITTAL SUMMARY**

24. The following is a summary of the major deadlines required by this Order. To the extent this summary is inconsistent with any other section of this Order, such section shall apply.

<b><u>Section</u></b>	<b><u>Action</u></b>	<b><u>Due Date</u></b>
III	Provide copy of Order to all contractors, subcontractors, laboratories	Within 30 days of the effective date of the Order or date of retention whichever occurs later
III	Provide written notice of Order to current Site owner and any successor in interest and notify EPA that such notice was given	Within 30 days of providing the notice
VI	Pump, analyze and dispose of the contents of UST-2	Within 30 days of awarding the contract

VI	Submit SAP for EPA review, comment and approval	Within 75 days of the effective date of the Order
VI	Implement EPA-approved SAP	Immediately upon EPA approval of the SAP according to the schedule in the approved SAP
VI	Submit SI Report for EPA review, comment, and approval	Within 60 days of completion of implementation of the approved SAP
VI	Submit proposed CAP for EPA review, comment, and approval	Within 90 days of approval of the SI Report
VI	Implement EPA-approved CAP	Immediately upon EPA approval of the CAP according to the schedule in the approved CAP
VII	Notify EPA, in writing, of any contractor(s) or consultant(s) who will be used	Within 45 days of the effective date of the Order
VII	Submit quarterly progress reports	By the 15th of the months of March, June, September, and December
X	Notify EPA, in writing, before engaging in any field activities	At least 30 days before activities commence
XIII	Designate a Project Coordinator and notify EPA, in writing, of the project coordinator selected	Within 15 days of the effective date of the Order

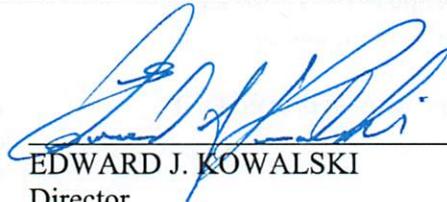
**XXIV. EFFECTIVE DATE**

24. The effective date of this Order shall be the date on which it is signed by EPA.

IT IS SO AGREED AND ORDERED:

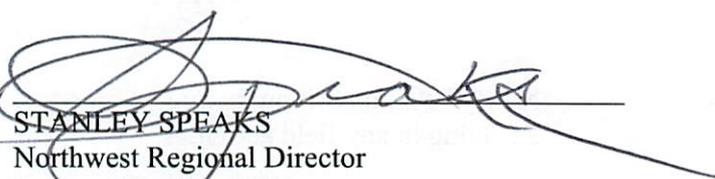
For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

Dated: 6/3/2014

  
EDWARD J. KOWALSKI  
Director  
Office of Compliance and Enforcement  
EPA Region 10

For RESPONDENT  
BUREAU OF INDIAN AFFAIRS

Dated: 5/19/2014

  
STANLEY SPEAKS  
Northwest Regional Director  
Bureau of Indian Affairs