Former Augusta Refinery
Augusta, Kansas
KSD007235138

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ENVIRONMENTAL PROTECTION AGENCY REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF: Former Augusta Refinery 2nd and Oak Streets Augusta, Kansas RCRA I.D. NO. KSD007235138 Williams Petroleum Services, L.L.C., RESPONDENT Proceeding under Section 3008(h) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(h).	Docket No.: RCRA-07-2004-0009

ADMINISTRATIVE ORDER ON CONSENT

TABLE OF CONTENTS

I. JURISDICTION 1

II. STATEMENT OF PURPOSE 2

III. DEFINITIONS 3

IV. PARTIES BOUND 7

V. FINDINGS OF FACT 9

VI. CONCLUSIONS OF LAW AND DETERMINATIONS 17

VII. WORK TO BE PERFORMED 18

VIII. PUBLIC PARTICIPATION 27

IX. AGENCY APPROVALS/SUBMITTALS 28

X. REPORTING 29

XI. ADDITIONAL WORK 30

XII. QUALITY ASSURANCE 31

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY 33

XIV. ACCESS 35

XV. RECORD PRESERVATION 37

XVI. NOTIFICATION AND DOCUMENT CERTIFICATION 39

XVII. DELAY IN PERFORMANCE/STIPULATED PENALTIES 43

XVIII. DISPUTE RESOLUTION 47

XIX. FORCE MAJEURE AND EXCUSABLE DELAY 49

XX. RESERVATION OF RIGHTS 51

XXI. OTHER CLAIMS 54

XXII. OTHER APPLICABLE LAWS 55

XXIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT . . . 55

XXIV. FINANCIAL RESPONSIBILITY 55

XXV. MODIFICATION 56

XXVI. DISCLAIMERS 57

XXVII. SEVERABILITY 59

XXIX. SURVIVABILITY/PERMIT INTEGRATION 60

XXX. APPENDICES 61

XXXI. EFFECTIVE DATE 61

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The authority vested in the Administrator to issue orders under § 3008(h) of RCRA has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32 dated March 6, 1986, and has been further delegated by the Regional Administrator for EPA, Region VII, to the Director of the Air, RCRA, and Toxics Division, EPA, Region VII, by EPA Delegation Nos. R7-8-31 and R7-8-32, January 1, 1995.

2. This Order is issued to Williams Petroleum Services, L.L.C. ("Respondent"), the owner and operator of a facility located at 2nd and Oak Streets, Augusta, Kansas (the "Facility").

3. By signing this Order, the Respondent admits the jurisdiction of the EPA regarding issuance of this Order, agrees to undertake all actions required by the terms and conditions of this Order and consents to be bound by the requirements set forth herein. Respondent neither admits

nor denies the specific factual allegations nor the conclusions set out in the Findings of Fact and Conclusions of Law below.

II. STATEMENT OF PURPOSE

4. In entering into this Order, the mutual objectives of EPA and the Respondent are:

   a. To perform a RCRA Facility Investigation ("RFI") to determine fully the nature and extent of any release of hazardous waste or hazardous constituents at or from the Facility; and

   b. To perform a Corrective Measures Study ("CMS") to identify and evaluate alternatives for any corrective measures necessary to prevent, mitigate, or remediate any releases of hazardous wastes or hazardous constituents at or from the Facility; and

   c. To evaluate the need for Interim Measures ("IM") at Respondent's Facility to address contamination at the Facility to relieve threats to human health or the environment; and

   d. To perform IM at the Facility that EPA determines are necessary to control contamination at the Facility, to relieve threats to human health or the environment, or are necessary to prevent or minimize the spread of

contaminants while long-term corrective measures are being evaluated.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the meaning assigned to them under RCRA or in such regulations. Whenever terms listed below are used in this Order or in attachments to this Order and incorporated hereunder, the following definitions shall apply:

a. "Administrative Record" shall mean the record compiled and maintained by EPA relative to this Order.

b. "Area of Concern" or "AOC" shall mean any area of the Facility under the control or ownership of Respondent where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

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

d. "Contractor" shall include any subcontractor, consultant or laboratory retained to conduct or monitor

any portion of the work performed pursuant to this Order.

e. "Corrective Measure" shall mean those measures or actions selected by EPA as necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment in order to protect human health or the environment.

f. "Corrective Measures Study" or "CMS" shall mean the investigation and evaluation of potential remedies which will protect human health or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility as set forth in paragraph 36.b of this Order.

g. "Data Quality Objectives" shall mean the qualitative or quantitative statements, the application of which is designed to ensure that data of known and appropriate quality are obtained.

h. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business Day" shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Order, where

the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the end of the next business day.

i. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency, and any successor departments or Agencies of the United States.

j. "Facility" shall mean the approximately 433 acres of real property currently owned by Respondent near Second and Oak Streets in Augusta, Kansas, and which were historically part of the refinery premises.

k. "Hazardous Constituents" shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.

l. "Hazardous Waste" shall mean hazardous waste as defined in § 1004(5) of RCRA or 40 C.F.R. § 260.10. This term includes hazardous constituents as defined above.

m. "Interim Measures" or "IM" shall mean those actions, which can be initiated before implementation of the final corrective action for the Facility, as set forth in paragraph 37 of this Order.

n. "Receptors" shall mean those humans, animals, or plants and their habitats which are or may receive or be

affected by releases of hazardous waste or hazardous constituents from the Facility.

o. "RCRA Facility Investigation" or "RFI" shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the contamination, including hazardous constituents, that have been or are likely to be released into the environment from the Facility, as set forth in paragraph 35 of this Order.

p. "Scope of Work" or "SOW" shall mean the outline of work Respondent must use to develop all work plans and reports required by this Order as set forth in this Order and its Attachments. All SOW Attachments and modifications or amendments thereto, are incorporated into this Order and are an enforceable part of this Order.

q. "Solid Waste Management Unit" or "SWMU" shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility where solid wastes have been routinely and systematically released.

r. "Violations" of this Order shall mean those actions or omissions, failures or refusals to act by Respondent that result in a failure to meet the terms and conditions of this Order or its attachments.

s. "Work" or "Obligation" shall mean any activity Respondent must perform to comply with the requirements of this Order and its Appendices.

t. "Work Plan" shall mean the detailed plans prepared by Respondent to satisfy the requirements of the corresponding Scope of Work. The requirements for each Work Plan are presented in Section VII of this Order, Work to be Performed and/or Appendix C and D of this Order.

IV. PARTIES BOUND

6. This Order shall apply to and be binding upon EPA, Respondent and its officers, directors, employees, agents, successors and assigns, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting for Respondent.

7. No change in ownership or corporate status relating to the Facility will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the

Facility, 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 the Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform any such tasks.

8 Within thirty (30) days of the effective date of this Order or at the time Respondent retains such person(s), whichever occurs later, Respondent shall provide a copy of this Order to all contractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order and shall condition all such contracts on compliance with the terms of this Order.

9. Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility or a portion thereof and shall notify EPA Region VII within ten (10) days prior to the effective date of any such transfer.

10. 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 rights to request a hearing on this matter pursuant to § 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the

issuance of this Order without a hearing pursuant to § 3008(b) of RCRA as a Consent Order issued pursuant to § 3008(h) of RCRA.

V. FINDINGS OF FACT

11. Respondent is a corporation organized under the laws of the State of Delaware and authorized to transact business in the State of Kansas.

12. Respondent owns approximately 433 acres of land as described in paragraph 5.j, above (the Facility). The location and boundaries of the Facility are shown on the map attached hereto as Figure 1 of Appendix A.

13. The Facility is near the confluence of the Whitewater and Walnut Rivers.

14. A predecessor in interest to Exxon Mobil Corporation ("Exxon Mobil") began petroleum refining operations at the Facility in approximately 1917, which operations continued largely uninterrupted until approximately 1983. A predecessor in interest to El Paso Merchants-Energy Petroleum Company ("El Paso") performed gasoline reforming operations and other petroleum related activities at the Facility after 1983.

15. Products made at the Facility prior to 1983 included propane; several grades of leaded, unleaded and aviation gasoline; kero-jet; No. 1 and No. 2 heating oil; heavy

alkylate; straight run naptha; three grades of diesel fuel; thermal gas oil; carbon black oil; 33 grades of asphalt; and 18 grades of cutback asphalt. Operations performed at the Facility prior to 1983 included crude oil distillation, catalytic reforming, thermofor catalytic cracking (TCC), alkylation, vacuum distillation, thermal cracking and asphalt blowing units.

16. In 1983, a predecessor in interest to Williams acquired the Facility from Mobil Oil Corporation, now Exxon Mobil.

17. Williams' predecessor in interest performed some gasoline blending and loading operations and stored petroleum products at the Facility, but neither Williams nor its predecessor in interest ever performed any refining operations at the Facility.

18. Exxon Mobil filed a timely notification pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, that hazardous wastes were generated treated, stored and disposed of at the Facility. Exxon Mobil also submitted a timely Part A permit application, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a). Because the Facility was in existence on November 19, 1980, Exxon Mobil met the requirements for the Facility to operate under Interim Status as provided in Section 3005(e) of RCRA, 42 U.S.C. 6925(e).

19. On February 21, 1984, Williams submitted Part A of the RCRA hazardous waste permit application to transfer interim status for the two surface impoundments to Williams.

20. In 1986, Williams leased certain northern portions of the Facility to El Paso to reactivate and operate two gasoline processing units, an auxiliary tankage, flare and cooling towers in order to reform and isomerize low-octane feedstocks received into the refinery by pipeline into market-grade gasoline. El Paso continued its activities until 1995 when it ceased all operations at the Facility.

21. The Facility is no longer in operation and is not manned. A security fence surrounds the Facility and access gates are routinely locked. Most of the structures associated with past refinery operations have now been torn down, demolished, covered over or otherwise taken out of service. These included office buildings, warehouses and loading docks, chemical storage sheds, a tank farm, petroleum refining equipment, a wastewater treatment facility, a process sewer system, wastewater ditches, roads, rail spurs, loading racks, parking areas, surface impoundments (including hazardous waste surface impoundments), a landfarm, a landfill, and a hazardous waste container storage unit. The former locations of these structures are

shown on the Facility map attached to this Order as Appendix B.

22. Wastes produced by Exxon Mobil during its operation of the refinery included wastewaters and wastewater sludges, spent catalysts, tank sludges, spent treating clays, spent molecular sieves, spent filter media, spent acids, other process sludges and wastes. These wastes contained petroleum and/or petroleum constituents and included wastes classified as D002, F002, K049, K050, K051 and various "U-listed" wastes as defined in 40 C.F.R. §§ 261.20-261.35. Some of the wastes could also have been ignitable and/or corrosive.

23. While operating the Facility, Exxon Mobil disposed of petroleum wastes into several surface impoundments, two landfarm's and five landfills. Releases of unrefined or refined petroleum and petroleum wastes have occurred from leaks in tanks, pipelines or other routine and systematic releases. Aerial photographs of the Facility dating back to 1938 show numerous places where Exxon Mobil may have released or disposed of petroleum.

24. In its operation of the Facility, El Paso released unrefined and refined petroleum and petroleum wastes from leaks in tanks and pipelines.

25. EPA has identified Sixteen SWMUs and six AOCs in the "Revised Background Information Document, Williams Pipeline Company, Augusta Refinery, Augusta, Kansas" dated December 2, 1998. Respondent identified additional potential SWMUs and AOCs in the "Current Conditions Report, Former Augusta Refinery" dated December 2001.

26. On June 10, 1987, KDHE approved a closure plan for two SWMUs, the Slop Oil Emulsion Pond and Caustic Evaporation-Neutralization Pond. On March 28, 1988, Williams certified that such impoundments were closed in accordance with the approved plan. The impoundments require a post-closure permit because they do not meet the closure by removal standard in 40 C.F.R. 270.1(c)(5).

27. An analysis of surface water, groundwater, soil, and free phase hydrocarbons collected from throughout the Facility have produced the following results:

    a. Surface water is contaminated with benzene, ethylbenzene, cadmium, lead, and toluene at the following concentrations above the maximum contaminant level ("MCL").

        i. Benzene was detected at levels of 2740 μg/l (micrograms per liter). The MCL for benzene in drinking water is 5 μg/l.

ii. Ethylbenzene was detected at levels of 730 μg/l. The MCL for ethylbenzene in drinking water is 700 μg/l.

iii. Cadmium was detected at levels of 18 μg/l. The MCL for cadmium in drinking water is 5 μg/l.

iv. Lead was detected at levels of 490 μg/l. The MCL for lead in drinking water is 15 μg/l.

v. Toluene was detected at levels of 1320 μg/l. The MCL for toluene in drinking water is 1000 μg/l.

This data was collected from three locations at the Facility: (1) a tributary ditch to SWMU #14, (2) a ditch to the north of the Facility, and (3) on-site wastewater ditches. These locations drain to ponds on the Facility which are ultimately discharged to the Whitewater River.

b. Soil concentrations found on the Eastern portion of the Facility, near the API Separator and Oil Skimming Pond, are contaminated with benzene ranging from 5 to 20 mg/kg on-site. The action level for benzene is 2 mg/kg at industrial facilities and 1 mg/kg in residential areas.

c. Data from monitoring wells installed for the "1997 Annual Groundwater Monitoring Report" prepared by Respondent, detected benzene and naphthalene in

groundwater at concentrations of 5.9 to 158 μg/l for benzene and 163 μg/l for naphthalene. The MCL and the Kansas Action Level for benzene and naphthalene are 5 μg/l and 143 μg/l, respectively. In addition, this report measured free phase hydrocarbons up to approximately 20 feet in thickness.

d. Data from monitoring wells installed for the "First Quarter 2002 Quarterly Groundwater Monitoring Report" prepared by Williams, detected benzene in groundwater at a concentration of 133 μg/l offsite further south and east than previously detected and migrating toward the Walnut River.

e. Free phase hydrocarbons volume has been estimated at between 5,000 and 65,000 barrels at the Facility. Free phase hydrocarbons are waste materials, not normally present in the subsurface, that have not mixed or dissolved into groundwater or that exist in the pore spaces of subsurface soils. Williams' December 2001 "Current Conditions Report" indicates that free phase hydrocarbons have continued to migrate from the extent identified in previous investigations by Mobil.

f. The U.S. Army Corps of Engineers, Tulsa District, identified free phase hydrocarbons and/or hydrocarbon

odors when performing a geotechnical design investigation of the Whitewater River levee adjacent to the Facility in the late summer of 2001. Hydrocarbons had not previously been identified in this area.

28. In 1992, Mobil completed construction of a remedial system allegedly intended to intercept, contain, remove and treat contaminated groundwater and recover free hydrocarbons, but it was ineffective.

29. The contaminants listed in paragraph 27 of this Order include volatile organic compounds, semi-volatile organic compounds and inorganic compounds, some of which are at concentrations above EPA's MCLs or other levels of concern for drinking water or are a health threat for other possible exposure pathways, such as exposure to contaminated soil. Additionally, the groundwater is contaminated with petroleum hydrocarbons. These contaminants include known and suspected carcinogens, human neurological and respiratory depressants, teratogens, and other types of potentially harmful agents, exposure to which could result in adverse health effects. Groundwater beneath the Facility generally flows to the Walnut River, such that if groundwater movement is not controlled, contaminants could migrate to the Walnut

River, where humans and animals could potentially be exposed to these contaminants.

30. Land use adjacent to the northern portion of the Facility is commercial and residential. Land use adjacent to the southern portion of the Facility is agricultural. The City of Augusta's Wastewater Treatment Facility is located near the southeastern boundary of the Facility.

31. Adjacent to the southern portion of the Facility is agricultural land that is irrigated by a well receiving water from the Walnut River.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

32. Based on the foregoing findings of fact and after consideration of the Administrative Record, the Director of Air, RCRA, and Toxics Division of EPA, Region VII, has made the following conclusions of law and determinations:

a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA.

b. Respondent is the owner or operator of a Facility that has operated, is operating, should be, or should have been operating under Interim Status subject to § 3005(e) of RCRA.

c. Certain wastes and constituents found at the Facility, and listed in paragraph 27 are hazardous wastes or

hazardous constituents pursuant to §§ 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.

d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from Respondent's Facility.

e. The actions required by this Order are necessary to protect human health or the environment.

VII. WORK TO BE PERFORMED

33. Pursuant to § 3008(h) of RCRA, Respondent is hereby ordered to perform the acts specified in this Section VII, in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum: the Scopes of Work attached hereto as Appendices C and D; the EPA-approved Interim Measures Work Plan, RCRA Facility Investigation Work Plan, Corrective Measures Study Work Plan and all other relevant work plans; RCRA and other applicable Federal laws and their implementing regulations; and applicable EPA guidance documents (see Appendix E).

34. All work performed pursuant to this Order shall be under the direction and supervision of an engineer, hydrologist, geologist, or environmental scientist, with expertise in hazardous waste cleanup. Respondent has selected Mr. Steve

Hoffine of Burns & McDonnell Engineering Company, Inc, Kansas City, Missouri to be its Contractor. During the course of the work performed, Respondent shall notify EPA in writing of any changes or additions to Respondent's selection of this Contractor. EPA shall have the right to disapprove in writing any such different or additional Contractor. EPA's disapproval of such different or additional Contractor shall not be subject to review under Section XVIII, Dispute Resolution.

35. RCRA Facility Investigation

a. Scope of RFI Work Plans

i. RFI Phase I- Within ninety (90) days of the effective date of this Order, the Respondent shall submit for EPA review and approval a Phase I RCRA Facility Investigation ("RFI") Work Plan. The Phase I RFI Work Plan shall provide for the investigation of SWMUs 10, 11, 12, 13, 14, 16, and 17, and AOCs 1, 4, 5, 6, 7, 8, 9, 10, 11, and 12 as shown on the map of the Facility included as Appendix B-2.

ii. RFI Phase II- Within twenty-four (24) months of the effective date of this Order, the Respondent shall submit for EPA review and approval a Phase

II RFI Work Plan. The Phase II RFI Work Plan shall provide for the investigation of SWMUs 3, 4, 5, 6, 8, 9, and 15, and Process Areas 1 - 3 as shown on the map of the Facility included in Appendix B-2.

iii. Supplemental RFI's-

(1) SWMUs 1 and 2 are regulated units currently under investigation by Respondent pursuant to a Consent Agreement with the Kansas Department of Health and Environment. If the KDHE requests that EPA take over from it oversight of the investigative work at SWMUs 1 and 2, or if EPA determines that the investigation of SWMUs 1 and 2 under the State Order is not providing the information necessary for an RFI under this Order, then, if EPA determines that it is necessary to complete a RFI at these units, the Respondent shall submit, within ninety (90) days, a Data Gap Work Plan for SWMUs 1 and 2 for EPA review and approval. The EPA will provide this determination in writing to the

Respondent. SWMUs 1 and 2 are shown on the map of the facility included in Appendix B-2.

(2) Based upon current information, SWMU 7 and AOCs 2 and 3 do not require a RFI. However, if new information becomes available that from which the EPA determines that a RFI is necessary, the Respondent shall, within ninety (90) days of receipt of written notice from EPA, submit, a RFI Work Plan for those SWMU or AOCs. SWMU 7 and AOCs 2 and 3 are shown on the map of the Facility included in Appendix B-2.

b. RFI Work Plan Requirements

i. The Phase I and Phase II RFI Work Plans, and any Work Plans for Supplemental RFIs, shall set forth in detail the methodology Respondent will use to: (1) characterize the potential pathways of contaminant migration; (2) characterize the source(s) of contamination; (3) define the degree and extent of contamination; (4) identify actual or potential receptors; and (5) support the development of alternatives from which a corrective measure may be selected by EPA. The

RFI Work Plan shall be developed in accordance with the requirements set forth in the RFI SOW (Appendix C).

ii. The RFI Work Plans shall provide for activities designed to provide the following information:

(1) Determination of on-site and off-site groundwater and surface water quality and distributions of dissolved hazardous wastes and hazardous constituents sufficient to prepare a map of the contamination and an evaluation of the risks associated with exposure to groundwater and surface water;

(2) Determination of the vertical and horizontal extent of on-site and off-site free phase hydrocarbons;

(3) Determination of the vertical and horizontal extent of hazardous wastes and hazardous constituents in on-site and off-site soils and sediments sufficient to prepare a map of the contamination and an evaluation of the risks associated with exposure to contaminated soils and sediments; and

(4) Determination of the extent of hazardous wastes and hazardous constituents in on-site and off-site soil gas sufficient to prepare a map of the contamination and an evaluation of the risks associated with exposure to contaminated soil gas.

c. Upon EPA's approval of each of the RFI Work Plans pursuant to Section IX (Agency Approvals) of this Order, Respondent shall conduct a RCRA Facility Investigation meeting the requirements of the RFI SOW (Appendix C), in accordance with the EPA-approved RFI Work Plan. Within twenty (20) days of EPA's approval of each RFI Work Plan, Respondent shall submit an electronic copy of the EPA-approved RFI Work Plan in "PDF" format on a CD-ROM.

d. RFI Reports- In accordance with the schedule in each of the EPA-approved RFI Work Plans, Respondent shall submit to EPA for review and approval an RFI Report meeting the requirements set forth in the RFI Scope of Work (Appendix C). The RFI Report must specifically include a description of (1) the nature, extent and distributions of dissolved hazardous wastes and hazardous constituents in groundwater and surface

water; (2) the extent of free phase hydrocarbons; (3) the extent of hazardous wastes and hazardous constituents in soil and sediment; (4) the extent of hazardous wastes and hazardous constituents in soil gas; and(4) a baseline risk assessment for exposure to contaminated soil, sediment, groundwater, surface water and soil gas. Within twenty (20) days of EPA's approval of each RFI Report, Respondent shall transmit to EPA an electronic copy of the EPA-approved RFI Report in "PDF" format on a CD-ROM.

36. Corrective Measures Study

a. CMS Work Plan- Within sixty (60) days of a written request by EPA, Respondent shall submit to EPA for review and approval a plan to develop and evaluate the corrective action alternative or alternatives and to recommend the corrective measure or measures, if any, to be taken at the Facility ("Corrective Measures Study Work Plan" or "CMS Work Plan"). The CMS may be conducted in a phased approach comparable to the phases outlined in Paragraph 35 of this Order for conducting the RFI. The CMS Work Plan shall set forth in detail how Respondent will analyze the results of the RCRA Facility Investigation and identify, screen and develop

the alternative or alternatives for removal, containment, treatment and/or other remediation of the contamination based on the objectives established for the corrective action. It shall include the components identified in the Corrective Measures Study Scope of Work (CMS Scope of Work), attached to this Order as Appendix D.

b. Corrective Measures Study- Respondent shall conduct the Corrective Measures Study in accordance with the EPA-approved CMS Work Plan and schedule therein. The CMS will be conducted with the assumptions that the site will undergo future development and will incorporate a risk-based analysis for such development.

c. CMS Report- In accordance with the schedule set forth in the EPA-approved CMS Work Plan, Respondent shall submit four copies of a report documenting the Corrective Measures Study ("Corrective Measures Study Report" or "CMS Report"), which meets the requirements of the CMS Scope of Work (Appendix D).

   i. Within twenty (20) days after EPA approves the CMS Report, Respondent shall submit an electronic copy of the EPA-approved CMS Report in "PDF" format on a CD-ROM.

37. Interim Measures ("IM")/Stabilization

a. In the event Respondent identifies an immediate or potential threat to human health or the environment, Respondent shall notify the EPA Project Coordinator, orally within 48 hours of discovery and in writing within ten (10) days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health or the environment. Upon written request of EPA, Respondent shall submit to EPA an IM Work Plan meeting the requirements of Paragraph 37.d of this Order. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to act prior to EPA's receipt of the IM Work Plan.

b. If EPA identifies an immediate or potential threat to human health or the environment as a result of releases from the Facility, EPA will notify Respondent in writing. Within five (5) days of receiving EPA's written notification, Respondent shall submit to EPA an IM Work Plan that identifies interim measures which will mitigate the threat. If EPA determines that immediate action is required, the EPA Project

Coordinator may orally require Respondent to act prior to Respondent's receipt of EPA's written notification.

c. All IM Work Plans shall ensure that the interim measures are designed to mitigate immediate or potential threat(s) to human health or the environment, and should be consistent with the objectives of, and contribute to the performance of any long-term remedy which may be required at the Facility.

d. The IM Work Plan shall be written to include the components recommended in the RCRA Corrective Action Interim Measures Guidance document (EPA/530-SW-88-029, June 1988). The components shall include, when appropriate as determined by EPA, the IM Objectives; a Health and Safety Plan; a Public Involvement Plan (Community Relations Plan); a Data Collection Quality Assurance Plan; a Data Management Plan; Design Plans and Specifications; an Operation and Maintenance Plan; a Project Schedule; an IM Construction Quality Assurance Plan; and Reporting Requirements.

VIII. PUBLIC PARTICIPATION

38. EPA will provide the public with an opportunity to review and comment on the Corrective Measures Study Report and, if applicable, a description of EPA's proposed Corrective

Measure(s), including EPA's justification for proposing such Corrective Measure(s).

39. Following the public comment period, and if applicable, EPA will determine the appropriate corrective measures for this Facility.

40. EPA will notify Respondent of the final Corrective Measure(s), if any, selected by EPA in the Final Decision and Response to Comments.

IX. AGENCY APPROVALS/SUBMITTALS

41. The following procedure will apply to the review and approval of all documents submitted to EPA for review and approval pursuant to the requirements of this Order. EPA will review each such document and notify Respondent, in writing, as to its approval or disapproval thereof. In the event EPA does not approve any such document, it will provide a written statement as to the basis of the disapproval, including a reference to the requirements of this Order which were not met. Respondent may, if it wishes to do so, request a meeting with EPA, to be held within twenty one (21) days of Respondent's receipt of EPA's comments, to discuss such comments before they become final. Within 30 business days of receipt of the EPA comments, or such longer time period as agreed to by the Parties,

Respondent shall amend the document in accordance with those comments and submit the amended document to EPA. EPA will make the final determination as to whether the document submitted by Respondent is or is not in compliance with the requirements of this Order. At that time when EPA determines that the document is in compliance with the requirements of this Order, EPA will transmit to Respondent a written statement to that effect. EPA reserves the right to approve documents with comments, conditions, or modifications.

X. REPORTING

42. Beginning with the first full quarter following the effective date of this Order, and throughout the period that this Order is effective, Respondent shall provide EPA with quarterly progress reports. Progress reports are due on the tenth day of the first month of the quarter following the reporting quarter. The progress reports shall include the following information:

    a. A description of the RFI or CMS activities, as appropriate, completed during the reporting period;

    b. Summaries of all findings;

    c. Summaries of all EPA approved changes made to the RFI or CMS during the reporting period;

d. Summaries of all contacts, during the reporting period, with representatives of the local community, public interest groups or State government concerning activities at the Facility;

e. Summaries of all problems or potential problems encountered during the reporting period;

f. Actions being taken to rectify problems encountered;

g. Changes in project coordinator, principal contractor, laboratory, and/or consultant during the reporting period;

h. Projected work for the next reporting period; and

i. Other relevant documentation, including, but not limited to copies of laboratory/monitoring data received and/or generated during the reporting period.

XI. ADDITIONAL WORK

43. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to the tasks included in any EPA-approved Work Plan ("Additional Work"), when such Additional Work is necessary to meet the purposes set forth in Section II, Statement of Purpose. In the event EPA determines that Additional Work is necessary, EPA will specify in writing the basis for its

determination. Respondent may request the opportunity to meet or confer with EPA to discuss the Additional Work within fifteen (15) days after the receipt of such determination. If required by EPA, Respondent shall submit for EPA approval a work plan for the Additional Work. Such Work Plan shall be submitted within thirty (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 the appropriate Work Plan in accordance with the schedule and provisions contained therein.

XII. QUALITY ASSURANCE

44. Respondent shall follow EPA guidance for sampling and analysis. Work plans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved Work plans must be approved by EPA prior to implementation and must be documented, including reasons for the deviations. Applicable guidances include, but are not limited to, "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans

(QA/G-5)" (EPA/600/R-98/018, February 1998), and such other applicable guidance identified by EPA.

45. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable Work Plan(s).

46. All Work Plans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

47. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, (SW-846)," or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan or EPA analytical methods and may require resampling and additional analysis.

48. Respondent shall ensure that the laboratories it uses for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. Field laboratories shall follow a written Quality Assurance Project Plan ("QAPP") approved by EPA as part of the RFI Work Plan required by paragraph 35.a of this Order. EPA may conduct a performance and quality assurance/quality control audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control, resampling and additional analysis may be required.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

49. Respondent shall submit to EPA, upon request, the results of all sampling or tests or other data generated by its agents, consultants, or contractors pursuant to this Order. Respondent shall submit all laboratory data (including field laboratory data) including QA/QC data in the electronic format required for data transfer by EPA's contract laboratory program.

50. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

51. Except in compliance with paragraphs 37.a and 37.b of this Order, Respondent shall notify EPA in writing at least thirty (30) days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. If Respondent believes it must commence field activities without delay, Respondent may seek telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately. At the request of EPA, Respondent shall provide or allow EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representative(s) to take split or duplicate samples of all samples collected by EPA under this Order.

52. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA

pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data required pursuant to this Order.

XIV. ACCESS

53. EPA, its contractors, employees, or any EPA representatives are authorized to enter and freely move about the Facility for the following purposes relating to this Order: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facility; 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. The Respondent agrees to provide EPA and

its representatives access at all reasonable times to the Facility and subject to paragraph 54 of this Order, to any other property to which access is required for implementation of this Order. Respondent shall permit such persons to inspect and copy all non-privileged 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.

54. To the extent that Work being performed pursuant to this Order must be done beyond the Facility boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Order from the present owner(s) of such property within thirty (30) days of approval of any Work Plan for which 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 such property requesting access agreement(s) to permit Respondent, EPA, and its authorized representatives to access such property, and the payment of reasonable sums of money in consideration of granting access. Any such access agreement shall provide for access by EPA and its

representatives. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreement(s). In the event that agreements for access are not obtained within thirty (30) days of approval of any Work Plan for which access is required, Respondent shall notify EPA in writing within fourteen (14) days thereafter of both the efforts undertaken to obtain access and the failure to obtain such agreements. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake EPA-approved Work on such property.

55. Nothing in this Section limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

56. Nothing in this Section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform Corrective Measures including Corrective Measures beyond the Facility boundary, notwithstanding the lack of access.

XV. RECORD PRESERVATION

57. Unless otherwise permitted by EPA, Respondent shall, without regard to any document retention policy to the contrary, preserve during performance of Work pursuant to this Order

and for a minimum of six (6) years after termination of the Order, all final records and documents and the final draft of documents which were not finalized, including sampling records and documents and field notes, in its possession, custody or control specifically relating to this Order or to hazardous waste management or disposal at the Facility. Respondent need not retain identical duplicate copies of documents. After this six-year period has lapsed, Respondent shall notify EPA at least sixty (60) calendar days prior to the destruction of any such document. Respondent shall, as directed by EPA, either provide to EPA the documents or copies of such documents or retain them for an additional time period reasonably specified by EPA. Respondent may, at its option, satisfy its document retention obligations hereunder by microfilming, or similarly storing, the entire contents thereof and destroying the original documents. If Respondent elects to follow such an option, it must secure EPA's prior approval for the specific method of storage. Respondent shall provide to EPA a sworn affidavit by the document custodian at the time of destruction indicating when and under what circumstances the original documents were destroyed and certifying that these are true and correct copies of

authentic original documents. All written notifications shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

William A. Spratlin, Director
Air, RCRA, and Toxics Division
U. S. Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

58. Respondent further agrees that within thirty (30) days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondent will enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Order.

59. All documents pertaining to this Order shall be stored by the Respondent in a mutually agreeable centralized location to afford ease of access by EPA or its representatives.

XVI. NOTIFICATION AND DOCUMENT CERTIFICATION

60. Unless otherwise specified, all reports, correspondence, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to EPA's Project Coordinator:

Ken Herstowski, ARTD/RCAP
Project Coordinator
U. S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone (913) 551-7631
Fax (913) 551-7947
Email herstowski.ken@epa.gov

EPA may change its designated Project Coordinator at any time by providing written notice to the Respondent.

61. The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of Work.

62. Respondent's Project Coordinator is:

David Farrand
Manager, Corporate EHS
The Williams Companies
48th Floor, Bank of Oklahoma Tower
Mail Drop 48-6
One Williams Center
Tulsa, Oklahoma 74101
Telephone 918-573-4489
Fax 918-573-4421
Email David.Farrand@Williams.com

Respondent's Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his absence. All properly addressed and sent communications directed to Respondent's designated Project Coordinator shall be deemed received by Respondent; provided, however, that Respondent may rebut the presumption of receipt by submitting to EPA an affidavit that the communication was never actually received.

Respondent may change its designated Project Coordinator by providing written notice to EPA as to the new Project Coordinator's name, title, company affiliation (if not an employee of Respondent), mailing address, telephone number, and fax number at least five (5) days prior to making the change.

63. Unless otherwise specified in this Order, Respondent shall hand deliver, send by certified mail, return receipt requested, or by overnight express mail three copies of all documents submitted pursuant to this Order to the EPA Project Coordinator or to other addressees designated by EPA's Project Coordinator.

64. 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 corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

65. The certification required by Paragraph 64 of this Order shall 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 portion(s) of this submittal for which I cannot personally 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 person(s), 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: _____

Name: _____

Title: _____

Date: _____

XVII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

66. 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 Section XIX, Force Majeure and Excusable Delay, of this Order, if Respondent fails to comply with the terms and conditions set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of an activity under this Order or a plan approved under this Order or completion of any other requirement of this Order in an acceptable manner and within the specified time schedules in and approved under this Order.

a. For failure to submit the RFI Work plan required by Paragraph 35.a of this Order, the RFI Report required by Paragraph 35.d of this Order, or the CMS Report required by Paragraph 36.c of this Order, Respondent shall pay $250 per day for the first seven days of such

violation, $500 per day for the eighth through twenty-first days of such violation, and $1000 per day for each day of such violation, thereafter;

b. For failure to complete any work required by Paragraphs 37 (Interim Measures) or 43 (Additional Work) of this Order, Respondent shall pay: $500 per day for the first seven days of such violation, $1000 per day for the eighth through twenty-first days of such violation, and $2000 per day for the twenty-second day and each day of such violation, thereafter;

c. For failure to submit written quarterly progress reports in accordance with the requirements of Paragraph 42 of this Order, Respondent shall pay: $100 per day for the first seven days of such violation, $250 per day for the eighth through twenty-first days of such violation, and $500 per day for the twenty-second day and each day of such violation, thereafter.

67. 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 date of completion of performance or the date of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of

this Order. Penalties shall accrue regardless of whether EPA has notified the Respondent of a violation.

68. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of the Respondent's receipt from EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVIII, Dispute Resolution, of this Order, in which case Respondent's duty to pay such penalty shall be suspended pending resolution of the dispute. Such a written demand will describe the violation and will indicate the amount of penalties due.

69. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Respondent's receipt of EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. Section 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.

70. EPA may, in its sole discretion, waive or suspend any stipulated penalties, or the accrual of such penalties, due to it under this Section based on equitable considerations. All penalties shall be made payable by certified or

cashier's check to the United States of America and shall be remitted to:

Mellon Bank
Attention: EPA Region VII
Office of the Comptroller
P. O. Box 360748M
Pittsburgh, PA 15251

All such checks shall reference the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA Project Coordinator.

71. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVIII, Dispute Resolution, of this Order. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision or agreement. Respondent shall submit such payment to EPA within seven (7) days of receipt of such resolution in accordance with Paragraph 70.

72. 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.

73. The stipulated penalties set forth in this Section XVII 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, provided that upon timely payment of a stipulated penalty for a specified violation, the stipulated penalty is the exclusive civil penalty for that violation.

74. No payments under this Section shall be tax deductible for federal tax purposes.

XVIII. DISPUTE RESOLUTION

75. 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 XVIII are the sole procedures for resolving disputes arising under this Order.

76. If Respondent disagrees, in whole or in part, with any decision or directive made by EPA pursuant to this Order, Respondent shall notify EPA in writing of its objections and the basis therefore within ten (10) business days of receipt of EPA's decision or directive or such other time period as agreed to by the Parties. This notice shall set forth the specific points of the dispute, the position Respondent is

maintaining should be adopted as consistent with the requirements of this Order, the factual and legal bases for Respondent's position, and all matters it considers necessary for EPA's determination.

77. EPA and Respondent shall then have an additional thirty (30) calendar days from EPA's receipt of Respondent's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party and incorporated into this Order. If the parties are unable to reach agreement within this 30-day period, EPA will promptly provide a written statement of its decision to Respondent, which shall be incorporated into this Order. Respondent's participation in this dispute resolution process shall not constitute a waiver under Paragraphs 90 or 100 of this Order of its right to challenge or object to the decision in an action taken by EPA resulting from or based upon the decision made by EPA under these procedures other than one reached by mutual agreement of the parties.

78. If the pendency of a dispute as defined herein and its resolution cause a delay that prevents Respondent from meeting a deadline set forth in, or established pursuant to, this Order, that deadline shall be extended as necessary;

provided, however, that any such deadline shall not be extended if EPA finds that the dispute was not in good faith or otherwise lacks a reasonable basis on the part of Respondent. For purposes of this paragraph, the dispute shall be considered resolved when an agreement by the parties has been reduced to writing and signed by both Parties, or, if the Parties are unable to reach an agreement, when EPA has provided a written statement of its decision to Respondent.

XIX. FORCE MAJEURE AND EXCUSABLE DELAY

79. Respondent shall perform the requirements of this Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not foreseeable and beyond the control of Respondent, including its consultants and contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance or changed economic circumstances.

80. Respondent shall notify EPA in writing ten (10) days after it becomes aware of events which Respondent knows or should

know constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, a description of the cause of the delay and the measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondent's right to assert a force majeure.

81. If EPA determines that the delay has been or will be caused by a force majeure, the time for performance for that element of Work, and other tasks the completion of which is dependent upon that element of Work, shall be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. All such modifications of the schedule caused by a force majeure shall be made in writing, and signed by representatives of both parties. The schedule for those tasks which are not altered by these modifications remains unchanged unless altered in accordance with Section XXV of this Order. In the event EPA and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the

length of the extension, this dispute shall be resolved in accordance with the Dispute Resolution provisions of Section XVIII of this Order.

XX. RESERVATION OF RIGHTS

82. 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 § 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

83. EPA reserves the right to disapprove of Work performed by Respondent pursuant to this Order and to request that Respondent perform additional tasks.

84. EPA reserves the right to perform any portion of the Work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment. EPA may exercise its authority under CERCLA 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.

85. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health 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 or to undertake any action which EPA determines is necessary to abate such release or threat.

86. 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 the SOW or any final Work Plan does not constitute a warranty or representation that the SOW or Work Plans 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.

87. 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 Air, RCRA, and Toxics Division, 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.

88. 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.

89. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, 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.

90. Reservations of rights by EPA in this Section are not intended to expand or enlarge the duties or obligations of Respondent under this Order. Except as expressly waived and specified in this Order, Respondent hereby reserves all rights that it may have to object to or challenge any action taken by EPA pursuant to this Order or otherwise.

XXI. OTHER CLAIMS

91. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility. The Respondent waives any claims or demands for compensation or payment under §§ 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred pursuant to this Order. Additionally,

this Order does not constitute any decision on preauthorization of funds under § 111(a)(2) of CERCLA.

XXII. OTHER APPLICABLE LAWS

92. 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.

XXIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

93. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XXIV. FINANCIAL RESPONSIBILITY

94. At the time of the RFI Work Plan submittal, Respondent shall submit to EPA (a) a cost estimate for implementation of this

Order; and (b) a balance sheet which reflects that Respondent or its parent has sufficient assets to complete the work required pursuant to this Order.

95. If at any time EPA determines that Respondent has defaulted in its responsibilities with regard to this Order, EPA may undertake to complete the tasks set forth in this Order.

XXV. MODIFICATION

96. This Order may only be modified by the mutual agreement of EPA and Respondent. All modifications shall be in writing, be signed by representatives of both parties. Unless otherwise provided for in the modification, the effective date of any such modification shall be the date on which the written agreement of the modification has been signed by both Parties. All such modifications shall be incorporated into this Order.

97. 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 approvals must be in writing. Any approved compliance date or Work Plan

modification shall be incorporated by reference into the Order.

XXVI. DISCLAIMERS

98. The only judicial or administrative proceeding in which EPA or Respondent may use this Order is one brought by or on behalf of EPA either to enforce the obligations of Respondent under this Order or to collect penalties for non-compliance with the terms of this Order, or both, or one by Respondent to seek contribution or recovery of response costs from any person who is liable or potentially liable to Respondent, or to seek indemnification from any person with respect to response activities which Respondent has agreed to undertake pursuant to this Order. This Order shall not be used in any other legal or administrative proceeding as evidence of a violation of law or as an admission against Respondent's or EPA's interests.

99. Except as specifically set forth in this Order, this Order shall not constitute or be construed as any waiver by or estoppel against Respondent with respect to any right, cause, claim or defense it may have in any proceeding against any other person or entity concerning liability for the releases which are the subject of this Order, or indemnification, contribution, reimbursement or cost

recovery of any expenses, including reasonable attorneys' fees, incurred by Respondent hereunder. Further, except as specifically set forth in this Order, Respondent expressly reserves all its rights, causes, claims and defenses against any such persons and entities concerning any such liability, indemnification, contribution, reimbursement and cost recovery.

100. Respondent's consent to EPA jurisdiction and authority to issue this Order is solely for the purposes of entry and enforcement of this Order. Said consent shall not constitute any admission by Respondent of any liability with respect to these matters, conditions on or surrounding the Facility or any acts or omissions by any person concerning the Facility. By signing this Order, Respondent does not waive, except for its consent to jurisdiction for purposes of entry and enforcement of this Order, including actions for penalties for non-compliance with the terms of this Order, any claim or defense that it might have raised to this Order, or that it might raise in any other judicial or administrative proceeding brought by EPA, including enforcement actions involving the dispute resolution provisions of Section XVIII of this Order, any other governmental agency or any other person. The parties

expressly reserve any and all privileges, including without limitation, Attorney Work-Product and Attorney-Client privileges, to which they are entitled under the Federal Rules of Civil Procedure and Federal Rules of Evidence, or any other applicable federal law or regulation, as amended. Nothing in this Order shall be construed as a waiver by either party of any of these privileges, laws or regulations. All provisions of the Order regarding the disclosure and sharing of information are subject to these privileges, laws and regulations, provided that the parties agree that sampling and analytical results developed pursuant to a Work Plan are not subject to any of the privileges.

XXVII. SEVERABILITY

101. 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.

XXVIII. TERMINATION AND SATISFACTION

102. 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 with these respective sections of the Order after the rest of the Order is satisfactorily completed.

XXIX. SURVIVABILITY/PERMIT INTEGRATION

103. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of

this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

XXX. APPENDICES

104. The following appendices are attached to and incorporated into this Order, by reference:

"Appendix A" is an area topographic map and facility location.

"Appendix B" is a map depicting structures formerly present on the Facility which have now been demolished.

"Appendix C" is the RCRA Facility Investigation Scope of Work.

"Appendix D" is the Corrective Measures Study Scope of Work.

"Appendix E" is the list of potentially relevant EPA Guidance Documents.

XXXI. EFFECTIVE DATE

105. This Order shall be effective upon receipt by Respondent of a fully executed copy thereof and all times for performance

of actions pursuant to this Order shall be calculated from that date.

IT IS SO AGREED:

10/10/03
Date

Williams Petroleum Services, LLC
By: _____
James E. Scheel
Vice-President
Williams Petroleum Services, LLC

ALS 10-4 Legal

For the United States Environmental Protection Agency

10/23/03
Date

Daniel J. Shiel
Assistant Regional Counsel
Environmental Protection Agency
Region VII

IT IS SO ORDERED:

10/24/03
Date

William A. Spratlin
Director, Air, RCRA, and Toxics Division
Environmental Protection Agency
Region VII

Appendix A– Area Topographic Map and Facility Location

IN THE MATTER OF Former Augusta Refinery; Williams Petroleum Services, L.L.C., Respondent
Docket No. RCRA-07-2004-0009

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order on Consent was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Daniel Shiel
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Michael D. Graves, Esq.
Hall, Estill, Hardwick, Gable,
Golden & Nelson
320 South Boston Avenue
Suite 400
Tulsa, Oklahoma 74103-3708

Dated: 9/24/03

Kathy Robinson

Kathy Robinson
Regional Hearing Clerk