

UNITED STATES DEPARTMENT OF JUSTICE  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4

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IN THE MATTER OF:

Ward Transformer Superfund Site,  
Raleigh, North Carolina

Raleigh-Durham Airport Authority

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CERCLA Docket No. CERCLA-04-2025-  
7003

ADMINISTRATIVE SETTLEMENT  
AGREEMENT FOR CERTAIN  
RESPONSE ACTIONS BY BONA FIDE  
PROSPECTIVE PURCHASER AND  
LOCAL GOVERNMENT

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## **I. GENERAL PROVISIONS**

1. This Administrative Settlement Agreement for Certain Response Actions by Bona Fide Prospective Purchaser and/or a Local Government (“Settlement”) is entered into voluntarily by the United States of America (“United States”) on behalf of the United States Environmental Protection Agency (“EPA”) and Raleigh-Durham Airport Authority (“RDUAA”). RDUAA operates an airport in Raleigh, North Carolina (“Airport”) and is regulated by, among other agencies, the Federal Aviation Administration (“FAA”). This Settlement provides for the performance of certain response actions by RDUAA (“Response Action to be Performed”) and the payment for certain oversight costs incurred by the United States at or in connection with certain property located at the Ward Transformer Superfund Site (“Site”), more specifically construction work to be performed by RDUAA at several locations within the boundaries of the Site in connection with its construction of a new replacement runway for the Airport (“New Runway”).

2. This Settlement is entered into under the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned EPA Regional official.

3. EPA has notified the State of North Carolina (“State”) of this action, including a notification to the North Carolina Department of Environmental Quality (“NC DEQ” or “DEQ”).

4. RDUAA represents that, with respect to the Property, it is a bona fide prospective purchaser (“BFPP”) meeting the criteria in sections 101(40) and 107(r)(1) of CERCLA, that it has complied and will continue to comply with sections 101(40) and 107(r)(1) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the need to carry out activities at the Site related to the construction of the New Runway, and the risk of claims under CERCLA being asserted against RDUAA notwithstanding section 107(r)(1) as a consequence of RDUAA’s activities at the Site, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XV (Covenants by United States), any potential liability of RDUAA under CERCLA for the Existing Contamination as defined by ¶ 12 below.

5. RDUAA represents that, with respect to certain real property owned by RDUAA, it is entitled to protection from CERCLA liability as a contiguous property owner under section 107(q) of CERCLA, 42 U.S.C. § 9607(q).

6. RDUAA represents that it also is exempt from liability as an owner or operator of the Property under section 101(20)(D) of CERCLA, 42 U.S.C. § 9601(20)(D) because it did not cause or contribute to the contamination and acquired the property by virtue of its function as sovereign.

7. RDUAA desires to maintain these liability protections during implementation of the requirements of this Settlement applicable to the construction of the New Runway and the

related Lumley Road Project, Approach Lights Project, and Water Pool Project (collectively, the “Projects”), as well as the work required of RDUAA under this Settlement to satisfy this Settlement, as defined herein.). To that end, the RDUAA wishes to facilitate EPA’s supervision over any and all of these activities that might affect EPA’s remedy for the Site.

8. RDUAA agrees to undertake all actions required by this Settlement. In exchange for RDUAA’s performance of the Work and payment for certain oversight costs, this Settlement resolves RDUAA’s potential CERCLA liability in accordance with the covenants not to sue in Section XV (Covenants by United States), subject to the reservations and limitations contained in Section XV. This Settlement is fair, reasonable, in the public interest, and consistent with CERCLA.

9. The United States and RDUAA (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith; that the actions undertaken by RDUAA in accordance with this Settlement do not constitute an admission of any liability; and that this Settlement is fair, reasonable, in the public interest. RDUAA does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations). RDUAA agrees not to contest the basis or validity of this Settlement or its terms, or the United States’ right to enforce this Settlement.

## **II. PARTIES BOUND**

10. This Settlement is binding upon the United States and upon RDUAA and its successors. Unless the United States otherwise consents, any change in ownership or corporate or other legal status of RDUAA does not alter RDUAA’s responsibilities under this Settlement. Except as provided in ¶ 61, Transfer of the Property or any portion thereof does not alter any of RDUAA’s obligations under this Settlement. RDUAA’s responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with Section XXII (Modifications).

11. RDUAA shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any other person performing or supervising the Work, as defined below, as well as any such person or entity representing RDUAA with respect to the Property. RDUAA is responsible for ensuring that such persons act in accordance with the terms of this Settlement.

## **III. DEFINITIONS**

12. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“2018 SRI Report” a report that summarized the groundwater investigation that the PRPs conducted between from October 2014 to February 2016 involving seven sampling events, as further described in ¶ 28.



“Airport” means the land and facilities owned by RDUAA and operated as its airport.

“Approach Lights Project” is described in ¶¶ 41 & 42.a.

“ARPZ” means an arrival runway protection zone.

“BFPP” means a bona fide prospective purchaser meeting the criteria in sections 101(40) and 107(r)(1) of CERCLA, 42 U.S.C. §§ 9601(40) and 9607(r)(1).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Contiguous Property Owner” means a contiguous property owner as described in section 107(q) of CERCLA, 42 U.S.C. § 9607(q).

“Court” means the court described in ¶ 109 below.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“DOT” means the North Carolina Department of Transportation.

“DOT MOU” means the Memorandum of Understanding between RDUAA and the DOT, dated February 11, 2025, regarding the relocation of Lumley Road, proposed variable (100’ minimum) Right of Way and proposed intersection design for SR 3099 (Mt. Herman Road).

“DRPZ” means a departure runway protection zone.

“Effective Date” means the effective date of this Settlement as provided in Section XXVIII.

“EPA” means the United States Environmental Protection Agency.

“Erosion & Sediment Control Plan” is the plan RDUAA is required to prepare and submit to EPA for its review under the SOW to document protocols that are to be followed by RDUAA and its contractor(s) with respect to the installation of construction stormwater management controls necessary for the collection and discharge of stormwater at the Property during the construction of the Projects and subsequent to their completion.

“Estes LURs” are the restrictions in the form of a restrictive covenant that were recorded for the Estes property in November 2013 before the removal action in this area began, for locations where it was expected that polychlorinated biphenyls (PCBs) would remain in place, as described in ¶ 24 below and Appendix D.

“Estes Property Acquisition” means the purchase on August 8, 2019, of the former Estes Trucking parcel, as described in ¶ 38.

“Estimated Cost of the Work” is defined in ¶ 64 below.

“Existing Contamination” means:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Existing Runway” means runway 5L-23R currently existing at the Airport.

“FAA” means the Federal Aviation Administration.

“FFS” means the Focused Feasibility Study defined in ¶ 29 below.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 U.S.C. § 9507.

“Health and Safety Plan” or “HASP” describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work, as required by the SOW.

“HMTA” means the federal Hazardous Materials Transportation Act, 42 U.S.C. §§ 5101-5128.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date EPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Institutional Controls” means: (a) Proprietary Controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both, and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office); and (b) state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to

implement, ensure noninterference with, or ensure the protectiveness of the OU-1 and OU-2 remedial actions; (iii) provide information intended to modify or guide human behavior at or in connection with the Site; or (iv) any combination thereof.

“Lumley Road” means North Carolina SR 1645.

“Lumley Road Project” is described in ¶¶ 39, 40 & 42.b.

“Material Management Plan” as described in the SOW is to document protocols that are to be followed by RDUAA and its contractor(s) with respect to the management of soils that do or may contain certain contaminants of concern that will be excavated or displaced in the course of constructing the Projects at the Property or in performing the Work at the Property.

“Mt. Herman Road” refers to North Carolina SR 3099.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“NC DEQ” or “DEQ” means the North Carolina Department of Environmental Quality.

“NC Well Abandonment Requirements” means the North Carolina statutes and rules governing the environmentally appropriate abandonment (closure) of groundwater monitoring wells, once they are no longer needed for sampling, and include, without limitation, sections 74-80 and 87-88 of the N.C. General Statutes and section .0240 of Subchapter 2C of Title 15A of the N.C. Administrative Code.

“New Runway” means the runway and its associated infrastructure to be constructed by RDUAA to replace existing Airport Runway 5L-23R and running to the west of and parallel to it and includes the New Runway RPZs.

“New Runway North RPZ Property” means the Estes Property Acquisition, the Ward Property Acquisition, and any other nearby properties acquired by RDUAA to satisfy the New Runway RPZ Requirements, as described in ¶ 38.

“New Runway RPZ Properties” means the New Runway North RPZ Property and the New Runway South RPZ Property, as described in ¶ 38.

“New Runway RPZ Requirements” are the requirements described in ¶ 38.

“New Runway South RPZ Property” means the Airport property already owned by RDUAA that will be used as the RPZ at the southern end of the New Runway, as described in ¶ 38.

“NPL” means the National Priorities List under CERCLA.

“OU-1” is Operable Unit 1 of the Site.

“OU-2” is Operable Unit 2 of the Site.

“OU-2 Removal Action” is the time-critical removal action performed at OU-2, as described in ¶¶ 21-26.

“Oversight Costs” shall mean all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States pays in supporting, developing, implementing, or overseeing this Settlement, including: (a) in developing, reviewing and approving deliverables generated under this Settlement; (b) in overseeing RDUAA’s performance of the Work;. Oversight Costs also includes all Interest accrued on EPA’s unreimbursed costs.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States and RDUAA.

“Performance Standards” means the measures of achievement of the remedial action objectives, as set forth in Section 8 of the OU-2 Record of Decision, specifically with respect to maintaining and/or repairing the engineered PCB cover system at locations where PCB contamination has been left in place, and implementation and maintenance of Institutional Controls applicable to the Property.

“Project Coordinator” means the person or entity designated by RDUAA in accordance with ¶ 46.a below.

“Projects” means the Lumley Road Project, the Approach Light Project, and the Water Pool Project.

“Property” means that portion of the Ward Transformer Superfund Site owned or to be acquired, and used by RDUAA for the Projects, and which is depicted in Appendix E.

“PRP” means a potentially responsible party under CERCLA as applied at the Site.

“RDUAA” means the Raleigh-Durham Airport Authority, a special-purpose unit of local government established by the North Carolina General Assembly in 1939 and existing under and by virtue of Chapter 168 of the Public-Local Laws of 1939, as amended.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Remedial Project Manager” or “RPM” means the person designated by EPA pursuant to ¶ 47 below.

“RI” means the phased remedial investigation conducted under the OU-2 ROD.

“Response Action” means those actions required under this Settlement and set forth in the SOW and generally described in Section VII (Response Action to be Performed).

“OU-2 ROD” shall mean the record of decision regarding the work at the Site, EPA ID: NCD03202603, dated September 2023.

“RPZ” or “runway protection zone” includes both the ARPZ and DRPZ for the New Runway, as required by the FAA and in accordance with the requirements of the FAA-approved Raleigh-Durham International Airport Layout Plan dated November 20, 2017.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Certain Response Actions by Bona Fide Prospective Purchaser and/or Local Government, all appendixes attached hereto (listed in Section XXI). If there is a conflict between a provision in Sections I through XXVIII and a provision in any appendix, the provision in Sections I through XXVIII controls.

“Site” means the Ward Transformer Superfund Site, in Raleigh, Wake County, North Carolina, assigned EPA ID NCD003202603.

“Site Monitoring Wells” are the groundwater monitoring wells at the Site which were used to produce the 2018 SRI Report and the FFS, as described in ¶ 30, but that have yet not been closed in accordance with the NC Well Abandonment Requirements.

“State” means the State of North Carolina.

“Statement of Work” or “SOW” means the Statement of Work attached as Appendix C, which describes the activities RDUAA must perform to implement and maintain the effectiveness of the Response Action.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Transferee” means the party to whom a Transfer is made.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Ward Property Acquisition” means the acquisition via eminent domain proceedings of the two (2) parcels composing the former Ward property, as described in ¶ 38.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any “hazardous substance” under section 130A-310 of the North Carolina General Statutes; (c) any pollutant or contaminant under section 101(33) of CERCLA; (d) any “solid waste” under section 1004(27) of RCRA; (e) any “solid waste” under section 130A-290 of the North Carolina General Statutes; (f) any “hazardous material” as any substance or material designated as such under sections 5102(2) and 5103(a) of HMTA; (g) any “hazardous waste” or “hazardous waste constituent” under section 130A-290 of the North Carolina General Statutes; and (h) any definition of any of the foregoing defined terms included in any federal regulation or North Carolina rule promulgated pursuant to any of the statutes listed in this definition.

“Water Pool Project” means the project described in ¶ 42.a.

“Work” means all obligations of RDUAA at or related to the Property under Section VII (Response Action to be Performed) through X (Indemnification and Insurance) of this Settlement Agreement, as well as any other activities described in the Statement of Work attached as Appendix C to this Settlement Agreement (“SOW”).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 54.

#### **IV. STATEMENT OF FACTS**

##### **Site History**

13. The Site includes the former Ward Transformer facility, surrounding affected properties, and surface water bodies downstream from the facility and affected areas. The former Ward Transformer facility is on Mount Herman Road in Raleigh, Wake County, North Carolina. It is about 600 feet south-southeast of Interstate 540 (also known as the Northern Wake Expressway) in an area of industrial and commercial land use and includes a portion of the Airport. In accordance with section 105 of CERCLA, EPA listed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register in April 2003.

14. The Ward Transformer facility was built on about 11 acres of previously undeveloped land in 1964. From 1964 to 2006, Ward Transformer Company, Inc. and then Ward Transformer Sales and Service, Inc. operated a facility that built, repaired, sold and reconditioned transformers, switchgear and similar types of electrical equipment. Facility operations included the main building where transformers were handled and offices were located, the transformer storage yard, a stormwater management lagoon and a building that housed a stormwater treatment system. On the northern part of the Site, a warehouse that was formerly part of Ward Transformer operations was leased to a lumber supply business from 1976 to 2002.

15. In 1971, two lagoons were created on the southern part of the Ward Transformer property for stormwater runoff. The upper lagoon had a pipe that drained to the lower lagoon. The lower lagoon had a pipe that drained to the unnamed tributary to Little Brier Creek (Reach A). Around 1979, the stormwater treatment system was added to the facility. Treated water from the stormwater treatment system was discharged to a permitted outfall on the unnamed tributary to Little Brier Creek (Reach A).

16. Facility operations resulted in the release of PCBs and other PCB-related chemicals from transformers, transformer parts and transformer oil into the environment, as well as smaller amounts of VOCs and semi-VOCs. Contamination was found in the soil at the Ward Transformer facility and adjacent properties, in the water and sediment in the lagoon, and in the sediments along the surface water pathway draining away from the plant.

## **Previous Investigations and Response Actions**

17. In 1978, the EPA collected several samples on and downstream from the Ward Transformer facility. Sampling found PCB and chlorinated benzene contamination in soil, in on-site storage tanks, in water and sediment in the facility's lagoon, and in surface water and sediment along the surface water pathway draining from the lagoon. PCBs were also found in sediment samples collected in tributaries, creeks and lakes downstream of the facility, and in fish and crayfish tissue collected in those surface water bodies.

18. State agencies completed more investigations at the Site between 1994 and 1997. Sampling confirmed contamination on and off the Ward Transformer facility property. Sampling of the facility's water supply well and a nearby private drinking water well did not detect PCBs or VOCs.

19. For purposes of managing the Site's cleanup under CERCLA, EPA divided the Site into two Operational Units ("OUs"). OU-2 includes the former Ward Transformer facility and surrounding affected properties, as well as an unnamed tributary to Little Brier Creek (Reach A), and has an area of approximately 80 acres. OU-1 covers areas downstream from OU-2 and generally addresses contamination in the downstream surface water bodies Brier Creek and Brier Creek Reservoir. EPA has issued final Records of Decision ("ROD") for both OU-1 and OU-2.

## **Remedial Investigation**

20. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA led a phased remedial investigation ("RI") at the Site from April 2003 to April 2007, in accordance with 40 C.F.R. § 300.430. Areas included in the evaluation included the Ward Transformer facility property, surrounding properties and more than 30 miles of waterways downgradient of the Ward Transformer facility. The RI investigated the distribution of pesticides/PCBs, PCB congeners, dioxins/furans, VOCs, semi-VOCs and metals in soil, surface water, sediments and groundwater. In an initial evaluation of risk in 2004, PCBs were found to be the primary contributor to the estimated total cancer risk for all exposure scenarios. The EPA judged the risk to be sufficient to require a removal action to address direct contact and off-site surface water transport of PCBs. The EPA issued an Enforcement Action Memorandum for a time-critical removal action in September 2004. The EPA updated it with a Supplemental Enforcement Action Memorandum in January 2013.

## **OU-2 Removal Action**

21. In September 2005, the EPA signed an Administrative Settlement Agreement and Order on Consent with a group of potentially responsible parties ("PRPs") to perform the time-critical removal action at the Ward Transformer facility and some immediately surrounding areas, including Reach A, subsequently identified as OU-2. The agreement required the removal of soil and sediment containing PCBs and prevention of off-site migration of material that may contain PCBs ("OU-2 Removal Action"). The OU-2 Removal Action began in 2007.

22. The OU-2 Removal Action soil cleanup level for PCBs was 1 milligram per kilogram (mg/kg). The EPA later approved a revised cleanup level of 10 mg/kg for soil that was thermally treated or beneath the treated soil final cover system (located within the footprint of

the facility's former lagoon). The treated soil final cover system included a geotextile fabric as a marker layer and a minimum of 1 foot of off-site soil covered with vegetation or stone. Figure 3 of the OU-2 ROD shows the area of the treated soil final cover system in the northeast part of OU-2.

23. Geotextile/plastic liners, crushed stone, concrete, soil or other engineering controls were also placed in areas where PCB-contaminated soil above the 1 mg/kg cleanup level was left in place. Table 1 of the OU-2 ROD includes a summary of the engineering controls in place. These areas include areas with excavation refusal, a limited area close to Interstate 540, an embankment along Lumley Road and the former Estes Express Lines (Estes) property south of the former Ward Transformer property. Excavation at the former Estes property was limited to a depth of two feet to avoid significant disruption of the then-operating business. The 2013 Supplemental Enforcement Action Memorandum required implementation of land use restrictions at the Estes property and other affected properties where complete removal is technically impracticable.

24. The OU-2 Removal Action included excavation of PCB-contaminated soil and debris, demolition of site structures at the former Ward Transformer facility, low-temperature thermal desorption treatment of soil with reuse of the treated soil as backfill, off-site disposal of untreated soil and debris, backfilling of excavations, and site restoration. The soil treatment area primarily covered the former lagoon. The removal action included the removal and thermal treatment or off-site disposal of over 480,000 tons of PCB-contaminated soil, sediment and debris. As part of the removal action, uncontrolled runoff of PCB-contaminated sediment was eliminated. Affected sediment in the former lagoon and its embankment was removed and treated or taken off site for disposal. Figure 2 of the OU-2 ROD shows the removal extent and maximum excavation depths from the OU-2 Removal Action.

25. Figure 4 of the OU-2 ROD shows the areas where PCBs above cleanup levels were left in place in OU-2. Land use restrictions in the form of a restrictive covenant were recorded for the Estes property in November 2013 ("Estes LURs"), before the removal action in this area began, for locations where it was expected that PCBs would remain in place. The Estes LURs are contained in Appendix D to this Settlement. At the time, it was anticipated that the restrictive covenant would be updated after completion of the removal action. A revised restrictive covenant is being prepared. Draft restrictive covenants were also prepared for five other properties in 2019 but they were not finalized nor recorded. The EPA decided to defer implementation of more institutional controls for affected properties until after a supplemental RI for groundwater.

26. The OU-2 Removal Action successfully met the requirements of the EPA's 2004 Enforcement Action Memorandum, as updated by the 2013 Supplemental Enforcement Action Memorandum. On August 26, 2019, the EPA issued a Notice of Completion of Work that all work had been fully performed, in accordance with the removal settlement agreement.



## **OU-2 Post-Removal Action Supplement Remedial Investigation and Focused Feasibility Study**

27. Initial groundwater investigations at the Site in 2003 and 2005 and before the OU-2 Removal Action indicated that concentrations of PCBs, benzene, chlorobenzene, 1,4-dichlorobenzene and 1,2,4-trichlorobenzene were present above federal Safe Drinking Water Act (SDWA) primary drinking water standards maximum contaminant levels (MCLs) and above the North Carolina (NC) groundwater quality standards at 15A North Carolina Administrative Code (NCAC) 02L .0202 in one or more monitoring wells at the Site. These compounds were primarily found in wells around the perimeter of the former Ward Transformer facility lagoon. Most of the wells were abandoned prior to the OU-2 Removal Action because they were in excavated areas.

28. After the OU-2 Removal Action, monitoring wells were re-installed at the Site. Groundwater sampling took place on seven occasions from October 2014 to February 2016, focusing on PCBs, benzene, chlorobenzene, 1,4-dichlorobenzene and 1,2,4-trichlorobenzene as chemicals of interest in this supplemental investigation. The results of this investigation are presented in the 2018 SRI Report.

29. A Focused Feasibility Study (“FFS”) Report for post-removal action conditions was finalized in February 2023, in accordance with 40 C.F.R. § 300.430. The FFS consisted of a series of assessments conducted during the SRI/FFS program to evaluate remedial alternatives for achieving preliminary remediation goals for the limited contaminants remaining in place after the OU-2 Removal Action. The FFS included collection of additional groundwater samples from monitoring well MW-03R in December 2019 for benzene, chlorobenzene, 1,4-dichlorobenzene and 1,2,4-trichlorobenzene as well as monitored natural attenuation (MNA) analysis parameters. In addition, a microbial analysis was performed.

30. At least some of the groundwater monitoring wells used to produce the 2018 SRI Report and the FFS continue to exist at the Site (“Site Monitoring Wells”) but have not yet been closed.

31. In September 2022, the EPA selected a remedial action to be implemented at OU-2, which is embodied in a final ROD executed on September 28, 2023, on which the State has given its concurrence. Notice of the final plan was published in accordance with section 117(b) of CERCLA. The OU-2 ROD provides generally for a soil cover, enhanced aerobic treatment to remediate groundwater contamination, soil and groundwater monitoring, and engineering and institutional controls.

## **OU-1 Remedial Action**

32. In September 2008, the EPA selected a remedial action to be implemented at OU-1, which is embodied in a final ROD executed on September 30, 2008, on which the State has given its concurrence. Notice of the final plan was published in accordance with section 117(b) of CERCLA. The OU-1 remedy includes excavation and off-site disposal of sediments and floodplain soil from Little Brier Creek (Reaches B and C), Little Brier Creek (Reach D) and

lower Brier Creek, monitored natural recovery in Brier Creek Reservoir, Lake Crabtree and Lower Crabtree Creek, and institutional controls.

33. In 2011, after unsuccessful attempts to negotiate a Consent Decree, the EPA issued a Unilateral Administrative Order to 23 PRPs to perform the remedial design and remedial action for OU-1 selected in the OU-1 ROD.

34. In 2016, after additional negotiations, the EPA entered into a Consent Decree with many parties to perform the OU-1 remedial design and remedial action.

35. In 2023, the OU-1 remedial action construction phase was finished. Monitoring of sediment and fish tissue in OU-1 is ongoing.

### **RDUAA's Planned Site Activities and Background**

36. RDUAA represents that to maintain the availability of safe and reliable air transportation from the Airport it must construct a new runway ("New Runway") at the Airport to replace existing runway 5L-23R ("Existing Runway"). The Existing Runway is deteriorating and must be replaced in its entirety. The New Runway also will be longer to allow the Airport to handle planes having greater operating ranges, the increased need for which is created by the economic development in the region around the Airport and the eastern portion of the State and its increasing demands for international travel.

37. RDUAA represents that it is imperative that it complete the New Runway as expeditiously as possible, but in any event no later than 2029 due to the limited projected lifespan of the Existing Runway and the anticipated demands for air service from the Airport.

38. To construct and operate the New Runway in accordance with FAA requirements for arrival runway protection zones ("ARPZs") and departure runway protection zones ("DRPZs") (collectively with ARPZs, "RPZs"), RDUAA must own the RPZ land in the vicinity of the New Runway in fee simple. These RPZs for the New Runway must conform to the requirements of the FAA-approved Raleigh-Durham International Airport Layout Plan, dated November 20, 2017 ("New Runway RPZ Requirements"). These New Runway RPZ Requirements include land both north or and south of the New Runway. In order to create the RPZ area north of the New Runway, RDUAA had to acquire portions of the Site: specifically, RDUAA had to acquire ownership of a number of separate real estate parcels, which include the purchase on August 8, 2019, of the former Estes Trucking parcel ("Estes Property Acquisition") and the acquisition via eminent domain proceedings of the two (2) parcels composing the former Ward property ("Ward Property Acquisition"). Collectively the Estes Property Acquisition, the Ward Property Acquisition, and any other nearby properties transferred to RDUAA to satisfy the New Runway RPZ Requirements are referred to herein as the "New Runway North RPZ Property." RDUAA already owned the property for the RPZ area south of the New Runway ("New Runway South RPZ Property"). Collectively, the New Runway North RPZ Property and the New Runway South RPZ Property may be referred as the "New Runway Way RPZ Properties"). FAA requirements prohibit RDUAA from selling any of the New Runway RPZ Property, strictly limit the height and other aspects of any construction or development on it and require that access to the New Runway RPZ Property be strictly limited.

39. In order to construct the New Runway, RDUAA must relocate Lumley and Mt. Herman Roads located north of the New Runway and construct an associated new intersection (“Lumley Road Project”).

40. Work on the Lumley Road Project is governed by the Memorandum of Understanding between the Authority and the DOT, dated February 11, 2025, regarding the relocation of Lumley Road Project (“DOT MOU”), which is attached as Appendix A to this Settlement Agreement. Among other things, under the DOT MOU, RDUAA or its contractor is responsible for the planning, design, permitting, right-of-way acquisition, utility relocation, and construction required to complete that Lumley Road Project, as described in section 2) on page 2 of the DOT MOU. Likewise, section 3) on page 2 of the DOT MOU gives DOT the right to, among other things, review and approve the design for the work; inspect, sample or test, and approve or reject, any portion of the Lumley Road Project.

41. The construction of the New Runway will require the construction of new runway approach lights (“Approach Lights Project”) within the Brier Creek Reservoir located south of the New Runway and inside the boundaries of OU-1.

42. The construction of the New Runway will require RDUAA to disturb soils within both OU-1 and OU-2, as described below:

a. For OU-1, soils will be disturbed (“Water Pool Project”), both within and at the edge of Brier Creek Reservoir, which serves a flood management function. The Water Pool Project will be conducted as generally shown in Appendix B-1 to this Settlement Agreement. In addition, as also shown in that Appendix B-1 map, RDUAA will construct the Approach Lights Project, which will involve placing approximately six (6) pilings shown as small purple squares west of Aviation Parkway and south of the New Runway, with the Approach Lights being located on horizontal structures on top of those pilings. As also shown in Appendix B-1, the Approach Light Project will also involve the placement of fill in or near Brier Creek Reservoir in the areas shown in Magenta Color and the removal of soil material in the areas in Blue Color. The soils being removed is to ensure that the Approach Lights Project does not reduce the Brier Creek Reservoir’s flood storage capacity.

b. For OU-2, soils will be disturbed within the boundaries of the operable unit, primarily due to the relocation of Lumley Road as a part of the Lumley Road Project, and final grading for the runway construction. The new location of Lumley Road is shown by a yellow and black line through a portion of the former Ward Site, as shown in Appendix B-2 to this Settlement Agreement. The Lumley Road Project will also involve the placement of fill soil in the area shown in purple on Appendix B-2.

## **V. DETERMINATIONS**

43. EPA has served as the lead agency for removal and remedial actions at the Site described above, and NC DEQ served as the support agency for those actions.

44. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

- a. The Site is a “facility”, and the Property is a “facility” as defined by section 101(9) of CERCLA.
- b. The contamination found at the Site and the Property, as identified in the Statement of Facts above, includes “hazardous substances” as defined by section 101(14) of CERCLA.
- c. RDUAA is a “person” as defined by section 101(21) of CERCLA.
- d. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site and the Property as defined by section 101(22) of CERCLA.
- e. Work required by this Settlement is necessary to protect the public health or welfare or the environment.

## **VI. COORDINATION AND SUPERVISION**

### **45. RDUAA’s Project Coordinator**

- a. RDUAA shall designate and notify EPA, within 60 days after the Effective Date, of the name, title, contact information, and qualifications of RDUAA’s proposed Project Coordinator. RDUAA shall notify EPA of the names, contact information, and qualifications of any contractor company or subcontractor company retained to perform the Work at least 30 days prior to commencement of such Work.
- b. RDUAA’s Project Coordinator will be responsible for administration of the Work required by this Settlement. RDUAA’s Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the RDUAA Project Coordinator shall be present on Site or readily available during the Work.
- c. RDUAA’s Project Coordinator will provide to EPA on behalf of RDUAA with the schedules for work on the Projects, in order that EPA will be aware of those schedules in reviewing deliverables, as described in the SOW.

### **46. Procedures for Notice and Disapproval**

- a. Within 30 days after receiving a notice from RDUAA designating a Project Coordinator, pursuant to ¶ 45.a above, EPA shall review for verification the Project Coordinator’s qualifications based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and to ensure there is no conflict of interest with respect to the project. RDUAA shall notify EPA of the names, contact information, and qualifications of any contractor company or subcontractor company retained to perform the Work at least 30 days prior to commencement of such Work.
- b. EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If EPA issues a notice of disapproval, RDUAA shall, within 60 days, submit to EPA a list of proposed supplemental project

coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor based on objective assessment criteria, (e.g., experience, capacity, or technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

d. RDUAA may change its Project Coordinator by following the procedures under ¶ 45.a and 45.b.

e. Notwithstanding the procedures of ¶¶ 46.a through 46.d, RDUAA has proposed, and EPA has authorized RDUAA to proceed, regarding the following Project Coordinator: James (Jim) Novak, PE, Director of Airside Engineering, Raleigh-Durham Airport Authority.

47. **EPA Remedial Project Manager.** EPA designates Othalia Richards of the EPA Restoration & Post Construction Section, Superfund Division, Region 4, as its Remedial Project Manager (“RPM”). The RPM has the authorities described in the NCP, including oversight of RDUAA’s implementation of the Work, authority to halt, conduct, or direct any Work, or direct any other removal action undertaken at the Property. The RPM’s absence from the Site is not a cause for stoppage of work unless specifically directed by the RPM. EPA may change its RPM and will notify RDUAA of any such change.

## VII. RESPONSE ACTION TO BE PERFORMED

48. **Performance of Work in Accordance with SOW.** RDU shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Response Action all in accordance with the SOW, any modified SOW, and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW. The Scope of the Response Action is limited to those activities conducted on or related to the Property, as set forth in the SOW, and generally includes the following:

a. Preparation of and compliance with a Material Management Plan, (“MMP”), which shall include those items identified in Section 2.1(a) of the SOW, including a Health and Safety Plan and an Emergency Response Plan. The MMP shall also have as attachments, if requested by EPA, copies of the Spill Prevention, Control, and Countermeasures Plan; Spill Prevention and Response Procedures; and the Stormwater Pollution Prevention Plan, per section 2.1(a) of the SOW;

b. Preparation of and compliance with an Erosion and Sediment Control Plan, per section 2.1(b) of the SOW;

c. Preparation of and compliance with an Institutional Controls Implementation and Assurance Plan (ICIAP), which shall provide generally for the development, implementation, and maintenance of appropriate Institutional Controls limiting the use of the Property, per section 2.1(c) of the SOW;

d. Abandonment of certain Site groundwater monitoring wells, per section 2.2 of the SOW;

e. Modification and completion of certain groundwater monitoring wells existing on the Property, per section 2.3 of the SOW;

f. Installation of any new security fencing and required signage to limit public access to portions of the New Runway North RPZ Property and such other areas of the Site as EPA determines to be necessary, per section 2.4 of the SOW; and

g. Implementation and maintenance of engineering controls associated with Site soil cover system on the Property, including but not limited to maintenance of geotextile liners and markings, soil cover, and/or concrete cover systems, per section 2.1 of the SOW.

49. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after RDUAA receives notification from EPA of the modification, amendment, or replacement.

50. Nothing in this Settlement and no EPA approval of any deliverable required under this Settlement constitutes a warranty or representation by EPA that completion of the Work will achieve the Performance Standards or support RDUAA's reuse.

#### **51. Modification of Response Action**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Response Action, and such modification is consistent with the Scope of the Response Action, then, upon receipt of notice from EPA and subject to its right to initiate dispute resolution under Section XIII within 30 days, RDUAA shall implement the modification as provided in ¶ 51.b below.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) in accordance with the final resolution of the dispute if RDUAA invokes the dispute resolution procedures. The modification shall be incorporated into and enforceable under this Settlement, and RDUAA shall implement all work required by such modification. RDUAA shall incorporate the modification into the deliverable required under the SOW, as appropriate.

#### **52. Continuing Obligations**

a. Issuance of Certification of Response Action Completion under the SOW, is not a protectiveness determination and does not affect the following continuing obligations:

- (1) continued compliance with CERCLA § 101(40);
- (2) obligations under Section VIII (Property Requirements);

- (3) maintenance of engineering controls associated with the OU-2 soil cover system, including but not limited to appropriate fencing and signage, as well as maintenance of geotextile liners and markings, soil cover, and/or concrete cover systems;
- (4) payment of Oversight Costs; and
- (5) obligations under Section XIX (Records).

b. If EPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will notify RDUAA and provide a list of the deficiencies. RDUAA shall promptly correct all such deficiencies. RDUAA shall submit a modified final report upon completion of the deficiencies.

53. **Compliance with Applicable Law.** Nothing in this Settlement affects RDUAA's obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required under this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. RDUAA shall include ARARs selected by EPA in the Material Management Plan. EPA deems the activities conducted in accordance with this Settlement, if approved by EPA, to be consistent with the NCP as provided under section 300.700(c)(3).

54. **Work Takeover**

a. If EPA determines that RDU: (1) has ceased to implement any of the Work required under this Section, (2) is seriously or repeatedly deficient or late in its performance of the Work required under this Section, or (3) is performing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to RDUAA, including a description of the grounds for the notice and a period of time ("Remedy Period") within which RDUAA shall remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, RDUAA does not remedy to EPA's satisfaction the circumstances giving rise to Work Takeover Notice, EPA may notify RDUAA and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIII (Dispute Resolution) but shall terminate the Work Takeover if and when: (1) RDUAA remedies, to EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIII that EPA is required to terminate the Work Takeover.

## VIII. PROPERTY REQUIREMENTS

55. **Notices.** RDUAA shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

56. **Non-Interference and Access.** RDUAA shall refrain from using the Property in any manner that EPA determines will pose an unacceptable risk to public health or welfare or the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action, unless expressly approved by the RPM. RDUAA shall provide full cooperation, assistance, and access to the Property to persons that are authorized to conduct response actions or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the Property). To the extent required under RDUAA's obligations to maintain airport security as required by the FAA, site access will require notice to RDUAA and may require an escort. Commencing on the Effective Date, RDUAA shall provide EPA and its representatives, including contractors, and subcontractors, access to the Property, and to any other property owned or controlled by RDUAA that is a part of the Site, at all reasonable times consistent with RDUAA's obligations to maintain airport security as required by the FAA to conduct any activity regarding the Settlement at the Property, including the following:

- a. implementing the Work and overseeing compliance with the Settlement;
- b. conducting investigations of contamination at or near the Property;
- c. assessing the need for planning, implementing, or monitoring additional response actions at or near the Property;
- d. implementing a response action by persons performing under EPA oversight;
- e. determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Settlement or an EPA decision document for the Site; and
- f. implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any Institutional Controls related to the Property.

57. **Appropriate Care.** Commencing on the Effective Date, RDUAA shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance. Based on information available to EPA as of the date of signature by EPA, appropriate care includes, but is not limited to: (1) Following the requirements outlined in the Material Management Plan and Erosion & Sediment Control Plan, referenced in the SOW, and consulting with EPA regarding Property development plans in order to ensure that proposed



activities will not interfere with the remedy for the Site, will follow appropriate waste characterization, handling, and disposal methods in accordance with State and federal law and regulation, and will avoid human and natural resource exposure; (2) Implementing and recording institutional controls, specifically restricting the nature of future land use (e.g., industrial use), preventing the use of groundwater, and preventing disturbance of any elements of response actions; (3) Providing cooperation, assistance, and access to the Property, as specified in ¶ 56 above, for the conduct, operation, and maintenance of response activities; (4) Maintaining the integrity of any fencing and/or physical access controls at the Site and taking other identified actions to prevent exposure; and (5) Refraining from using the Property in any manner that would adversely affect the implementation, integrity, or protectiveness of any past or future response actions performed at the Site.

**58. Land, Water, or Other Resource Use Restrictions**

a. The following is a list of land, water, or other resource use restrictions currently applicable to any portion of the Property:

- (1) (1) the Estes LURs (Appendix D), which generally restrict any disturbance of engineered cover controls in areas known to be impacted with PCBs; and
- (2) the New Runway RPZ Requirements (“Existing LURs”), which generally restrict any disturbance, construction, development, access, or any other incompatible land use on real property including, but not limited to, the Property.

b. RDUAA shall: (1) remain in compliance with any land use restrictions established or relied on in connection with any response action at the Property; (2) develop, implement, maintain, ensure compliance with, and report on Institutional Controls related to the Property; and (3) not impede the effectiveness or integrity of any Institutional Control employed on or at the Property in connection with a response action.

**59. Notice to Successors-in-Title.** RDUAA shall, prior to entering into a contract to Transfer any of the Property, or 60 days prior to transferring any of the Property, whichever is earlier:

a. notify the proposed Transferee that EPA has selected remedial actions regarding the Site, that RDUAA has entered into an Administrative Settlement Agreement requiring implementation of certain response actions and compliance with the requirements at the Property in this Section (identifying the name, CERCLA docket number, and the Effective Date of this Settlement); and

b. notify EPA of the name and address of the proposed Transferee and provide EPA with a copy of the above notice that it provided to the proposed Transferee, and notify EPA if RDUAA seeks termination of its obligations in accordance with ¶ 61.

**60.** RDUAA shall require that any Transferees and other parties with rights to use any of any Transferred Property provide access and cooperation to EPA, its authorized officers,

employees, representatives, and all other persons performing response actions under EPA oversight, consistent with any limitations imposed by the New Runway RPZ Requirements. RDUAA shall require that Transferees and other parties with rights to use any of the Property implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any response action and not contest EPA's authority to enforce any land use restrictions and Institutional Controls on any of the Property.

61. Upon sale or other conveyance of any of the Property, RDUAA shall require that each Transferee or other holder of an interest in any of the Property agrees to comply with the ongoing requirements under Section VII (Response Action to be Performed), including the continuing obligations in ¶ 52, Section XIX (Records), and this Section and not contest EPA's authority to enforce these requirements or any land use restrictions and Institutional Controls on any of the Property. After EPA's issuance of a Certification of Response Action Completion under the SOW and RDUAA's written demonstration to EPA that a Transferee or other holder of an interest in any of the Property agrees to comply with the requirements of this ¶ 61, EPA will notify RDUAA that its obligations under this Settlement, except obligations under Section XIX (Records), are terminated with respect to any of the Property.

62. RDUAA shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use any of the Property as of the Effective Date.

63. Notwithstanding any provision of this Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and Institutional Controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

## **IX. FINANCIAL ASSURANCE**

64. To ensure completion of the Work required under Section VII (Response Action to be Performed), RDUAA shall secure financial assurance satisfactory to EPA through a financial test, initially in the amount of \$13,500,000 ("Estimated Cost of the Work"). RDUAA shall, within sixty (60) days of the Effective Date:

a. demonstrate that:

(1) RDUAA has:

- i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. net working capital and tangible net worth with each worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) RDUAA has:

- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA for RDUAA: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

c. **Trust.** If RDUAA seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, and EPA issues a notice of a Work Takeover under ¶ 54, RDUAA shall at that time establish and thereafter maintain a trust fund, which must meet the requirements specified in ¶ 64.c(1), and into which payments from the other financial assurance mechanism can be deposited if EPA so requires in accordance with the terms and conditions of the financial assurance mechanism and ¶ 67 (Access to Financial Assurance). An originally signed duplicate of the trust agreement must be submitted to EPA. Until the trust fund is funded pursuant to ¶ 67, neither payments into the trust fund nor annual valuations are required.

- (1) A trust fund: (i) established to ensure that funds will be available as and when needed for performance of the Work; (ii) administered by a trustee that has the authority to act as a trustee and whose trust operations are

regulated and examined by a federal or state agency; and (iii) governed by an agreement that requires the trustee to make payments from the fund only when the Superfund & Emergency Management Division Director or his/her delegatee advises the trustee in writing that: (A) payments are necessary to fulfill RDUAA's obligations under this Settlement; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Settlement.

65. If the financial assurance mechanism provided pursuant to ¶ 64 above is satisfactory to EPA, RDUAA shall thereafter also:

- a. annually resubmit to EPA the documents described in ¶ 64 within 90 days after the close of RDUAA's or guarantor's fiscal year;
- b. notify EPA within 30 days after RDUAA or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of RDUAA or guarantor in addition to those specified in ¶ 64; EPA may make such a request at any time based on a belief that RDUAA or guarantor may no longer meet the financial test requirements of this Section.

66. RDUAA shall diligently monitor the adequacy of the financial assurance. If RDUAA becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, RDUAA shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify RDUAA of such determination. RDUAA shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for RDUAA, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. RDUAA shall follow the procedures of ¶ 68 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. RDUAA's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

**67. Access to Financial Assurance**

- a. If EPA issues a notice of a Work Takeover under ¶ 54, then, in accordance with any applicable financial assurance mechanism, EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be deposited into a trust fund.
- b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and RDUAA fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA

may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into a trust fund, created in accordance with ¶ 64.c, for use consistent with this Section.

**68. Modification of Amount, Form, or Terms of Financial Assurance.** On any anniversary of the Effective Date, or at any other time agreed to by the Parties, RDUAA may submit a request to change the form, terms, or amount of the financial assurance mechanism. RDUAA shall submit any such request to EPA in accordance with this Section and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify RDUAA of its decision regarding the request. RDUAA may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XIII. RDUAA may initiate dispute resolution under Section XIII regarding EPA's decision about a request to change the amount of financial assurance. Any decision made by EPA on a request to change the form or terms of a financial assurance mechanism shall not be subject to challenge by RDUAA pursuant to the dispute resolution provisions under Section XIII. RDUAA shall submit to EPA within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

**69.** If RDUAA modifies the financial assurance mechanism, RDUAA may submit one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. RDUAA may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit, accompanied by a trust if required under ¶ 64.c:

a. a surety bond guaranteeing payment, performance of the Work, or both, in accordance with ¶ 67 (Access to Financial Assurance), that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit, guaranteeing payment in accordance with ¶ 67 (Access to Financial Assurance), which is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund meeting the requirements of ¶ 64.c(1);

d. a demonstration that meets the requirements of ¶ 64 above.

**70. Release, Cancellation, or Discontinuation of Financial Assurance.** RDUAA may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Response Action Completion under the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there

is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final administrative decision resolving such dispute under Section XIII.

## **X. INDEMNIFICATION AND INSURANCE**

### **71. Indemnification**

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of RDUAA as EPA's authorized representatives under section 104(e)(1) of CERCLA. RDUAA shall indemnify and save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of RDUAA, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on RDUAA's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any designation of RDUAA as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, RDUAA agrees to pay the United States all costs it incurs, including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of RDUAA, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities under this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of RDUAA in carrying out activities under this Settlement. RDUAA and any such contractor may not be considered an agent of the United States.

b. The United States shall give RDUAA notice of any claim for which the United States plans to seek indemnification under this ¶ 71 and shall consult with RDUAA prior to settling such claim.

72. RDUAA covenants not to sue and shall not assert any claim against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between RDUAA and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, RDUAA shall indemnify and save and hold the United States harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between RDUAA and any person for performance of work on or relating to the Site, including claims on account of construction delays.

73. **Insurance.** RDUAA shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of RDUAA under this Settlement. RDUAA shall

maintain this insurance until the first anniversary after issuance of EPA's Certification of Response Action Completion under the SOW. In addition, for the duration of this Settlement, RDUAA shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of RDUAA in furtherance of this Settlement. Prior to commencement of the Work, RDUAA shall provide to EPA certificates of such insurance and a copy of each insurance policy. RDUAA shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If RDUAA demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, RDUAA need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. RDUAA shall ensure that all submittals to EPA under this Paragraph identify the Ward Transformer Superfund Site, Raleigh, North Carolina and the CERCLA docket number for this action.

## **XI. PAYMENT FOR OVERSIGHT COSTS**

### **74. Payments for Oversight Costs**

a. **Periodic Bills.** On a periodic basis, EPA will send RDUAA one or more bills for Oversight Costs, including an "e-Recovery Report" or other standard cost summary listing direct costs paid by EPA and DOJ and related indirect costs. Total Oversight Costs are not expected to exceed \$300,000 over the course of the Projects. If the total Oversight Costs exceed \$300,000, the Parties shall discuss the excess amounts. If the Parties reach an agreement on a new amount greater than \$300,000, RDUAA shall pay that amount. If the Parties fail to reach such an agreement regarding a new amount within a reasonable time, RDUAA may initiate a dispute under ¶ b.

b. RDUAA may initiate a dispute under Section XIII regarding an Oversight Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Oversight Costs; (3) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP; or (4) a dispute about what the total amount of Oversight Costs are under subsection a. above. RDUAA shall specify in the Notice of Dispute the contested costs and the basis for the objection.

c. **Payment of Bill.** RDUAA shall pay the bill, or if it initiates dispute resolution under Section XIII, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. RDUAA shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (1) the uncontested bill or portion of bill, if late, and; (2) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment.

75. **Payment Instructions.** RDUAA shall make all payments at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link and include references to the CERCLA docket number and Site/Spill ID number listed below and the purpose of the

payment. RDUAA shall send notices of this payment to EPA and include these references. EPA will deposit the amounts paid under this Settlement in the Fund.

## **XII. FORCE MAJEURE**

76. “Force Majeure,” for purposes of this Settlement, means any event arising from causes beyond the control of RDUAA, of any entity controlled by RDUAA, or of RDUAA’s contractors that delays or prevents the performance of any obligation under this Settlement despite RDUAA’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that RDUAA exercise “best efforts” to fulfill the obligation includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance or a failure to achieve the Performance Standards.

77. If any event occurs for which RDUAA will or may claim a force majeure, RDUAA shall notify EPA’s RPM email. The deadline for the initial notice is 7 days after the date RDUAA first knew or should have known that the event would likely delay performance. RDUAA shall be deemed to know of any circumstance of which any contractor, subcontractor, or entity controlled by RDUAA knew or should have known. Within 30 days thereafter, RDUAA shall send a further notice to EPA that includes: (a) a description of the event and its effect on RDUs’ completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the delay; (c) the proposed extension of time for RDUAA to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of RDUAA, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (e) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes RDUAA from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 76 and whether RDUAA has exercised best efforts under ¶ 76, EPA may, in its unreviewable discretion, excuse in writing RDUAA’s failure to submit timely or complete notices under this Paragraph.

78. EPA will notify RDUAA of its determination whether RDUAA is entitled to relief under ¶76, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, in itself, extend the time for performance of any other obligation. RDUAA may initiate dispute resolution under Section XIII regarding EPA’s determination within 15 days after receipt of the determination. In any such proceeding, RDUAA has the burden of proving that it is entitled to relief under ¶ 77 and that its proposed extension was or will be warranted under the circumstances.

79. The failure by EPA to timely complete any activity under this Settlement is not a violation of the Settlement, provided, however, that if such failure prevents RDUAA from



meeting one or more deadlines under this Settlement, RDUAA may seek relief under this Section.

### **XIII. DISPUTE RESOLUTION**

80. Unless otherwise provided in this Settlement, RDUAA shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

81. A dispute will be considered to have arisen when RDUAA sends EPA a timely written notice of dispute (“Notice of Dispute”). A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute or within 15 days in the case of a force majeure determination. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between EPA and RDUAA. The period for informal negotiations may not exceed 30 days after the dispute arises unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless RDUAA initiates formal dispute resolution under ¶82. By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.

#### **82. Formal Dispute Resolution**

a. **Statement of Position.** RDUAA may initiate formal dispute resolution by submitting to EPA, within seven days after the conclusion of informal dispute resolution under ¶ 82, an initial Statement of Position regarding the matter in dispute. EPA’s responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, EPA Region 4, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental statements of position. The formal decision is binding on RDUAA and shall be incorporated into and become an enforceable part of this Settlement.

83. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees.

### **XIV. CERTIFICATION**

84. RDUAA certifies to the best of its knowledge and belief that after thorough inquiry and as of the date of RDUAA’s signature (a) it is a BFPP; (b) has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site; (c) it has fully and accurately disclosed to EPA all information unknown to EPA and known to RDUAA and all information unknown to EPA in the possession or control of its officers, directors, employees, contractors, and agents which relates in any way to any Existing

Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site; and (d) it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any documents and electronically stored information relating to the Site.

## XV. COVENANTS BY UNITED STATES

85. **Covenants for RDUAA.** Subject to ¶ 88, the United States covenants not to sue or to take administrative action against RDUAA under sections 106 and 107(a) of CERCLA for the Existing Contamination, the Work, and Oversight Costs under Section XI (Payment for Oversight Costs).

86. The covenants under ¶ 85: (a) take effect upon the Effective Date; (b) are conditioned on (1) the satisfactory performance by RDUAA of the requirements of this Settlement; and (2) the veracity of the information provided to EPA by RDUAA relating to RDUAA's involvement with the Site and the certification made by RDUAA in ¶ 84; (c) extend to the successors of RDUAA but only to the extent that the successor of RDUAA is assuming all obligations under this Settlement and the alleged liability of the successor of RDUAA is based solely on its status as a successor of RDU; and (d) do not extend to any other person.

87. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States or EPA to seek or obtain further relief from RDUAA if the information provided to EPA by RDUAA relating to RDUAA's involvement with the Site or the certification made by RDUAA in ¶ 84 is false or in any material respect inaccurate.

88. **General Reservations.** Notwithstanding any other provision of this Settlement, the United States reserves, and this Settlement is without prejudice to, all rights against RDUAA regarding the following:

- a. liability for failure by RDUAA to meet a requirement of this Settlement;
- b. liability resulting from an act or omission that causes exacerbation of Existing Contamination by RDUAA, its successors, assigns, lessees, or sublessees;
- c. liability resulting from the disposal, release, or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- d. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site, except as provided in clause c of the definition of Existing Contamination;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. criminal liability.

89. With respect to any claim or cause of action asserted by the United States, RDUAA shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and RDUAA has complied with all the requirements of CERCLA §§ 101(40) and 107(r).

90. Subject to ¶ 85, nothing in this Settlement limits any authority of the United States or EPA to take, direct, or order all appropriate action to protect public health and welfare and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as it deems appropriate and necessary.

## **XVI. COVENANTS BY RDUAA**

### **91. Covenants by RDUAA**

a. Subject to ¶ 92, RDUAA covenants not to sue and shall not assert any claim or cause of action against the United States under CERCLA, RCRA § 7002(a), the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding Existing Contamination, the Work, payments under Section XI (Payment for Oversight Costs), and this Settlement.

b. Subject to ¶ 92, RDUAA covenants not to seek reimbursement from the Fund through CERCLA or any other law for the costs regarding the Existing Contamination, the costs of the Work, payments under Section XI (Payment for Oversight Costs), or any claim arising out of response actions at or in connection with the Site.

92. **RDUAA's Reservation.** The covenants in ¶ 91 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶ 88.

## **XVII. EFFECT OF SETTLEMENT; CONTRIBUTION**

93. Each of the Parties expressly reserves any and all rights (including under section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

94. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which RDUAA has, as of the Effective Date, resolved liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (b) RDUAA is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, payments under Section XI and all response actions taken or to be taken and all response costs

incurred or to be incurred in connection with Existing Contamination by the United States or any other person, except the State. However, if the United States exercises rights under the reservations in ¶¶ 88.a through 88.e “matters addressed” in this Settlement will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

95. RDUAA shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify DOJ and EPA in writing no later than 60 days prior to the initiation of such suit or claim. RDUAA shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify DOJ and EPA in writing within 10 days after service of the complaint or claim upon RDUAA. In addition, RDUAA shall notify DOJ and EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

96. Nothing in this Settlement diminishes the right of the United States under sections 113(f)(2) and (3) of CERCLA to pursue any person not a Party to this Settlement to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

## **XVIII. RELEASE AND WAIVER OF LIEN(S)**

97. Subject to the reservation of rights in Section XV (Covenants by United States), upon payment of the amount specified in Section XI (Payment for Oversight Costs) and issuance of a Certification of Response Action Completion under the SOW, EPA agrees (a) to release any lien it may have on the Property under section 107(l) of CERCLA as a result of response actions conducted by EPA at the Property and (b) to release and waive any lien it may have on the Property now and in the future under section 107(r)(2) of CERCLA for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

## **XIX. RECORDS**

### **98. Retention of Records and Information**

a. RDUAA shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after a Certification of Response Action Completion under the SOW (“Record Retention Period”):

- (1) All records regarding Existing Contamination or any release or threat of release of hazardous substances, pollutants or contaminants at or from the Site.
- (2) All records regarding RDUAA’s liability and the liability of any other person under CERCLA regarding the Site;
- (3) All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and

- (4) All data developed by, or on behalf of, RDUAA in the course of performing the Work.

b. At the end of the Record Retention Period, RDUAA shall notify EPA that it has 90 days to request RDUAA's Records subject to this Section. RDUAA shall retain and preserve its Records subject to this Section until 90 days after EPA's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

99. RDUAA shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section. RDUAA shall also comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

#### **100. Privileged and Protected Claims**

a. RDUAA may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that RDUAA complies with ¶ 100.b and except as provided in ¶ 100.c.

b. If RDUAA asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such record: title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, RDUAA shall provide the record to EPA in redacted form to mask the privileged or protected portion only. RDUAA shall retain all records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in RDUAA's favor.

c. RDUAA shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that RDUAA is required to create or generate in accordance with this Settlement.

**101. Confidential Business Information Claims.** RDUAA is entitled to claim that all or part of a record submitted to EPA under this Section is Confidential Business Information ("CBI") that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). RDUAA shall segregate all records or parts thereof submitted under this Settlement which it claims are CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that RDUAA properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies RDUAA that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to RDUAA.

102. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XX. NOTICES AND SUBMISSIONS

103. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*  
eescdcopy@usdoj.gov  
Re: DJ# 90-11-2-07152\11

As to EPA: *via email to:*  
Othalia Richards, Remedial Project Manager  
Region 4 Superfund & Emergency Management Division  
Richards.Othalia@epa.gov  
Re: Site/Spill ID # A4S4

As to EPA Regional  
Financial Management  
Officer: *via email to:*  
Paula Painter, Program Analyst  
Region 4 Superfund & Emergency Management Division  
Painter.Paula@epa.gov  
Re: Site/Spill ID # A4S4

As to RDU: *via email to:*  
Michael J. Landguth, President & CEO  
Raleigh-Durham Airport Authority  
[michael.landguth@rdu.com](mailto:michael.landguth@rdu.com)

with a copy to:  
Erin Locklear, General Counsel  
Raleigh-Durham Airport Authority  
Erin.locklear@rdu.com

## XXI. APPENDICES

104. The following appendices are attached to and incorporated into this Settlement:

“Appendix A” is the Memorandum of Understanding between RDUAA and the DOT, dated February 11, 2025.

“Appendix B” is comprised of Appendix B-1 (Water Pool Project and Approach Lights Project) and B-2 (Lumley Road Project) maps.

“Appendix C” is the Statement of Work.

“Appendix D” contains the Estes LURs.

“Appendix E” is a map of the Property.

## **XXII. MODIFICATIONS**

105. Except as provided in ¶ 51 (Modifications to Response Action) above and ¶ 4.6 of the SOW (Approval of Deliverables), modifications to Sections I through XXVIII (Effective Date) and the Appendices must be in writing and are effective when signed (including electronically signed) by EPA and RDUAA; provided, however, that modifications to Section XV (Covenants by United States), and modifications that result from a modification under ¶ 51 (Modifications to Response Action) that goes beyond the Scope of the Response Action are effective when signed (including electronically signed) by the Parties.

106. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by RDUAA shall relieve RDUAA of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXIII. SIGNATORIES**

107. Each undersigned representative of the United States and the undersigned representative of RDUAA certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind RDUAA to this Settlement.

## **XXIV. DISCLAIMER**

108. This Settlement is in no way a finding by EPA as to the risks to public health and welfare and the environment that may be posed by contamination at the Property or the Site or a representation by EPA that the Property or the Site is fit for any particular purpose.

## **XXV. ENFORCEMENT**

109. The Parties agree that the United States District Court for the Eastern District of North Carolina (“Court”) will have jurisdiction, including under section 113(b) of CERCLA for any judicial enforcement action brought with respect to this Settlement.

110. Notwithstanding ¶ 85 of this Settlement, if RDUAA fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, RDUAA consents to and agrees not to contest

the exercise of personal jurisdiction over it by the Court. RDUAA further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

111. If the United States files a civil action as contemplated by ¶ 109 to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: (a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and (b) any additional relief that may be authorized by law or equity.

112. RDUAA shall be liable for all costs incurred by the United States to enforce this Settlement, including the following: (a) in taking a response action described in ¶ 90 because of RDUAA's failure to take emergency action under ¶ 2.7 of the SOW; (b) in implementing a Work Takeover under ¶ 54; (c) in securing, implementing, monitoring, maintaining, or enforcing the requirements of Section VIII (Property Requirements); (d) in taking action under ¶ 67 (Access to Financial Assurance); and (e) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs and interest accrued thereon.

## **XXVI. INTEGRATION**

113. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement.

## **XXVII. PUBLIC COMMENT**

114. This Settlement is subject to a 30-day public comment period, after which the United States may withdraw its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

## **XXVIII. EFFECTIVE DATE**


115. The effective date of this Settlement is the date upon which EPA issues written notice to RDUAA that the United States, after review of and response to any public comments received, will not withdraw consent or seek to modify this Settlement.



Signature Page for Administrative Settlement Agreement regarding the Ward Transformer Superfund Site (CERCLA Docket No. CERCLA-04-2025-7003)

**IT IS SO AGREED:**

8/21/2025  
Dated

  
MICHAEL J. LANDGUTH, A.A.E.  
RALEIGH-DURHAM AIRPORT AUTHORITY  
PRESIDENT & CEO  
1000 TRADE DRIVE; P.O. BOX 80001  
RDU, AIRPORT, NC 27623

This instrument has been pre-audited in the manner required by the Local Government budget and Fiscal Control Act.

  
Signature of Ronald Kapocius, Finance Officer

Approved as to form:  
 8/21/2025  
Legal Counsel

Signature Page for Administrative Settlement Agreement regarding the Ward Transformer Superfund Site (CERCLA Docket No. CERCLA-04-2025-7003)

**IT IS SO AGREED:**

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Maurice Horsey, IV, Chief  
Enforcement Branch  
Superfund & Emergency Management Division, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Derek Matory, Chief  
Restoration & Site Evaluation Branch  
Superfund & Emergency Management Division, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Signature Page for Administrative Settlement Agreement regarding the Ward Transformer Superfund Site (CERCLA Docket No. CERCLA-04-2025-7003)

**IT IS SO AGREED:**

**U.S. DEPARTMENT OF JUSTICE:**

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**[Name]**

**[INSERT]**

U.S. Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 20530

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Dated

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Stefan J. Bachman  
Senior Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611 Ben Franklin Station,  
Washington, D.C. 20044-7611

# APPENDIX A

**MEMORANDUM OF UNDERSTANDING**  
*Between*  
**THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**  
*and*  
**RALEIGH-DURHAM AIRPORT AUTHORITY**

THIS **Memorandum of Understanding** (MOU), is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of State government of North Carolina, herein referred to as “**Department**” and the Raleigh-Durham Airport Authority, a municipal corporation created by the General Assembly of North Carolina, and existing under and by virtue of Chapter 168 of the Public-Local Laws of 1939, as amended, hereinafter referred to as the “**Authority**” and together will be referred to as the “**Parties**.”

**W I T N E S S E T H:**

WHEREAS, the **Authority** plans to replace Runway 5L-23R with a new runway parallel to the existing, with proposed arrival and departure runway protection zones (ARPZ and DRPZ) in accordance with the requirements of the Federal Aviation approved Raleigh-Durham International Airport Layout Plan dated November 20, 2017; and,

WHEREAS, the proposed runway ARPZ and DRPZ conflict with existing SR 1645 (Lumley Road); and,

WHEREAS, the **Authority** proposes to relocate a portion of SR 1645 (Lumley Road) and construct a new intersection with SR 3099 (Mt. Herman Road) to eliminate conflict with the ARPZ and DRPZ; and,

WHEREAS, the **Authority** has advised conflicts between the proposed runway ARPZ and DRPZ and existing SR 3097 Aviation Parkway can remain and do not require relocation; and,

WHEREAS, the **Department** has approved the new alignment for the relocation of SR 1645 (Lumley Road), the proposed variable (100’ minimum) Right of Way and proposed intersection design for SR 3099 (Mt. Herman Road) allowing the **Authority** to proceed with final design and construction; and,

WHEREAS, upon satisfactory completion of construction of the relocated SR 1645 (Lumley Road) and intersection with SR 3099 (Mt. Herman Road) the **Authority** desires to transfer and dedicate all improvements to the **Department**; and,

WHEREAS, the **Department** has the authority to review and approve all design and construction impacting the State Highway System and to accept the proposed dedication from the **Authority** upon satisfactory completion of the project and appropriate Right of Way dedication; and,

NOW, THEREFORE, the **Department** and **Authority** hereto agree to the following conditions and provisions as hereinafter set forth as follows:

## **MOU SPECIFIC PROVISIONS**

### **1) SCOPE**

The scope of this MOU is to address the roles and responsibilities of the Parties in relation to the relocation of SR 1645 (Lumley Road) and construction of a new intersection with Lumley Road and SR 3099 (Mt. Herman Road), hereinafter referred to as the Project, and shown on the attached plan sheet (Exhibit A).

### **2) AUTHORITY RESPONSIBILITIES**

- A. The **Authority** will be responsible for the planning, design, permitting, Right Of Way (ROW) acquisition, utility relocation, and construction of the Project.
- B. The **Authority** will acquire all ROW in accordance with NCDOT practices and shall dedicate this ROW to the **Department** prior to acceptance for maintenance. The estimated ROW acquisition is shown on the attached plan sheet (Exhibit B).
- C. The **Authority** will design and construct the Project in strict compliance with the current version of NCDOT Standard Specifications for Roads and Structures, Standard Drawings, minimum sampling and testing criteria, and all related protocols required for **Department** facilities.
- D. The **Authority** will ensure all traffic operations are in compliance with the Manual on Uniform Traffic Control Devices (MUTCD).

### **3) DEPARTMENT RESPONSIBILITIES**

- A. The **Department** will review and approve the Project's design prior to construction.
- B. The **Department** will abandon existing ROW for the portions of Lumley Road and Mt. Herman Road that are eliminated by the realignment.
- C. The **Department** shall have the right to inspect, sample or test, and approve or reject, any portion of the Lumley Road realignment work being performed by the **Authority** or the **Authority's** contractor to ensure compliance with the provisions of this Agreement.
- D. The **Department** will accept the Project for maintenance once all construction is satisfactorily completed per NCDOT standards and the **Authority's** responsibilities have been met.

### **4) TIMEFRAME**

Subject to the provisions stated herein, this MOU shall be in effect from the date of execution by **Department** until all work has been completed and the **Department** has accepted the Project for maintenance.

## **GENERAL PROVISIONS**

### 5) **MOU**

#### A. Entire MOU

This MOU between the **Parties** includes the complete agreement as expressly set forth herein.

#### B. Authorization to Execute

The **Parties** hereby acknowledge that the individual executing the MOU on their behalf is authorized to execute this MOU on their behalf and to bind the respective entities to the terms contained herein and that he has read this MOU, conferred with his attorney, and fully understands its contents.

#### C. MOU Modifications

Any modification to this MOU including, but not limited to, changes in scope, funding, or responsibilities will be agreed upon by all Parties by means of a revised MOU or another acceptable written format agreed to by all Parties.

#### D. Other Agreements

The **Authority** is solely responsible for all Memorandum of Agreements, Memorandum of Understandings, contracts, purchase orders and work orders entered into or issued by the **Authority** for this work. The **Department** is not responsible for any expenses or obligations incurred for the work under the terms of this MOU.

### 6) **PERFORMANCE OF THE WORK**

The **Authority** shall be responsible for administering all work performed and for certifying to the **Department** that all terms set forth in this MOU are met and adhered to by the **Authority** and/or its contractors and agents. The **Department** must approve any assignment or transfer of the responsibilities of the **Authority** set forth in this MOU to other **Parties** or entities.

### 7) **COMPLIANCE WITH STATE/FEDERAL POLICY**

The **Authority**, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this MOU and in applicable guidelines and procedures.

### 8) **FAILURE TO COMPLY - CONSEQUENCES**

Failure on the part of the **Authority** to comply with any of the provisions of this MOU will be grounds for the **Department** to terminate participation in the MOU.

## 9) REFERENCES

It will be the responsibility of the **Authority** to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this MOU.

## 10) INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Authority** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement and arising on account of the negligence of the **Authority** or its officers, directors, principals, employees, agents, contractors, successors, or assigns, or on account of the **Authority's** breach of responsibilities under the terms of this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Authority's** negligence and/or breach of its responsibilities under the terms of this agreement.

## 11) DEBARMENT POLICY

It is the policy of the **Department** not to enter into any MOU with **Parties** that have been debarred by any government agency (Federal or State). By execution of this MOU, the **Authority** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or **Department** and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

## 12) TITLE VI - CIVIL RIGHTS ACT OF 1964.

The **Parties** shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

## 13) EQUAL EMPLOYMENT OPPORTUNITY

The **Parties** shall take affirmative action and not discriminate against any employee or applicant for employment to ensure that applicants are employed, and that employees are fairly treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection of training, including apprenticeship. The **Authority** shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this MOU.



**14) AMERICANS WITH DISABILITIES ACT**

The **Parties** agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation.

**15) RESTRICTIONS ON LOBBYING**

The **Parties**, and their agents, including all contractors, sub-contractors, or sub-recipients, agree to comply with the requirements of Title 49 CFR Part 20, New Restrictions on Lobbying.

**16) DRUG-FREE WORKPLACE**

The **Parties**, and their agents, including all contractors, sub-contractors, or sub-recipients agree to comply with Title 49 CFR Part 32.400, Drug-Free Workplace requirements.

**17) GIFT BAN**

By Executive Order 24 and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation , and the Office of the Governor).

**SIGNATURE PAGE**

IN WITNESS WHEREOF, this **MEMORANDUM OF UNDERSTANDING** has been executed, in duplicate, the day and year heretofore set out, on the part of the **Department** and the **Authority** by authority duly given:

**(DOCUSIGN ONLY)****RALEIGH-DURHAM AIRPORT AUTHORITY**

DocuSigned by:  
 Authorized Signer: Michael J. Landguth  
 9D2705385F6F431...  
 Print Name: Michael J. Landguth  
 Title: President & CEO  
 Date Signed: 03/25/2025

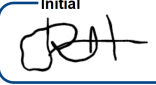
Fed Tax ID No: 56-6002199  
 Remittance Address:  
rdu airport 3240 po box 9563  
Charlotte, NC 28298-6863

DocuSigned by:  
 This instrument has been pre-audited in the manner required by the Local Government budget and Fiscal Control Act.  
 Finance Officer: Ron Kapocius  
 7DEE1B3620944C8...  
 Print Name: Ron Kapocius  
 Date Signed: 04/22/2025

**NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION**

Signed by:  
 By: Lamar Sylvester  
 EF11EAF2524D443...  
 Title: Chief Engineer  
 Date: 04/24/2025

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 3/6/2025 (Date)

Initial  


**SIGNATURE PAGE**

IN WITNESS WHEREOF, this **MEMORANDUM OF UNDERSTANDING** has been executed, in duplicate, the day and year heretofore set out, on the part of the **Department** and the **Authority** by authority duly given:

**(INK SIGNATURES)****RALEIGH-DURHAM AIRPORT AUTHORITY**

ATTEST: \_\_\_\_\_

Authorized Signer: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

TITLE: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date Signed: \_\_\_\_\_

Fed Tax ID No: \_\_\_\_\_

Finance Officer: \_\_\_\_\_

Remittance Address: \_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Date Signed: \_\_\_\_\_

\_\_\_\_\_

**NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION (DocuSign)**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)



A circular diagram with a shaded area. The shaded area is a circle with a radius of 150 feet. The unshaded area is a square with a side length of 150 feet. The scale bar indicates distances of 0, 150, and 300 feet.

Point	North	East	Elevation
BL-101	781778.3230	2064596.4610	394.57
BL-102	781933.7820	2064519.1370	385.85
BL-103	782125.5880	2064483.9680	373.55
BL-104	782224.4670	2065954.0110	389.14
BL-105	782056.5100	2066610.6320	399.26
BL-106	781911.9390	2067120.5660	398.86
BL-107	781803.2370	2067604.4700	406.90
BL-108	782304.1600	2067454.1540	410.53
BL-109	782934.2410	2067945.1430	413.64
BL-110	783137.2610	2067208.1290	429.31
BL-111	783146.3960	2066962.6930	417.19
BL-112	783155.3830	2066814.6660	411.21
BL-113	782970.7460	2066768.9820	399.70
BL-114	782827.9240	2066620.2160	398.68
BL-115	782876.7320	2066345.1710	380.70
BL-116	782803.6820	2066049.7740	370.17
BL-117	782633.8170	2066003.5110	395.26
BL-118	782047.7630	2068096.1810	402.23
BL-119	782356.6600	2068464.2260	389.44
BL-120	782748.7600	2068915.4770	373.66
BL-121	781374.4430	2067844.1430	403.81

**WK DICKSON**  
community infrastructure consultants

720 CORPORATE CENTER DRIVE  
RALEIGH, NC 27607  
(t) 919-782-0495  
(f) 919-782-9672

WWW.WKDICKSON.COM

NC LICENSE NO. F-0374

DRAFT

PROFESSIONAL SEAL

## REVISION RECORD

DESCRIPTION

DATE \_\_\_\_\_

No.

LUMLEY ROAD RELOCATION  
FOR  
RALEIGH-DURHAM AIRPORT AUTHORITY  
MORRISVILLE, NC 27560

## PROJECT CONTROL

PROJECT NAME:

**DRAWING TITLE:**

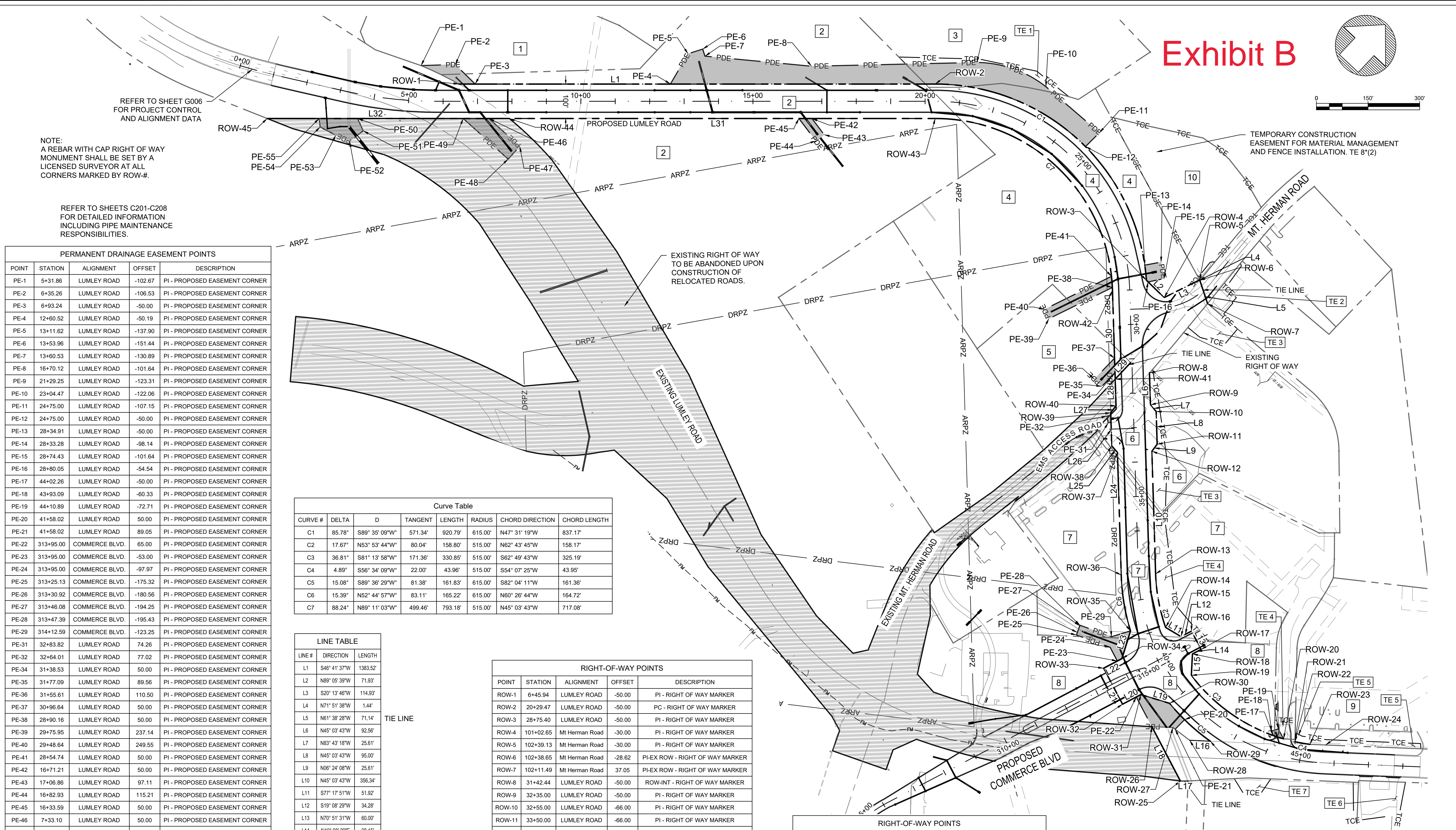
PROJ. MGR.:	JPK
DESIGN BY:	PJB
DRAWN BY:	SVO
PROJ. DATE:	MAR 05 2025
DRAWING NUMBER:	

G006

WKD PROJ. NO.:  
20180266.02.RA

95% DESIGN - NOT RELEASED FOR CONSTRUCTION





PERMANENT DRAINAGE EASEMENT POINTS				
POINT	STATION	ALIGNMENT	OFFSET	DESCRIPTION
PE-1	5+31.86	LUMLEY ROAD	-102.67	PI - PROPOSED EASEMENT CORNER
PE-2	6+35.26	LUMLEY ROAD	-106.53	PI - PROPOSED EASEMENT CORNER
PE-3	6+93.24	LUMLEY ROAD	-50.00	PI - PROPOSED EASEMENT CORNER
PE-4	12+60.52	LUMLEY ROAD	-50.19	PI - PROPOSED EASEMENT CORNER
PE-5	13+11.62	LUMLEY ROAD	-137.90	PI - PROPOSED EASEMENT CORNER
PE-6	13+53.96	LUMLEY ROAD	-151.44	PI - PROPOSED EASEMENT CORNER
PE-7	13+60.53	LUMLEY ROAD	-130.89	PI - PROPOSED EASEMENT CORNER
PE-8	16+70.12	LUMLEY ROAD	-101.64	PI - PROPOSED EASEMENT CORNER
PE-9	21+29.25	LUMLEY ROAD	-123.31	PI - PROPOSED EASEMENT CORNER
PE-10	23+04.47	LUMLEY ROAD	-122.06	PI - PROPOSED EASEMENT CORNER
PE-11	24+75.00	LUMLEY ROAD	-107.15	PI - PROPOSED EASEMENT CORNER
PE-12	24+75.00	LUMLEY ROAD	-50.00	PI - PROPOSED EASEMENT CORNER
PE-13	28+34.91	LUMLEY ROAD	-50.00	PI - PROPOSED EASEMENT CORNER
PE-14	28+38.28	LUMLEY ROAD	-98.14	PI - PROPOSED EASEMENT CORNER
PE-15	28+74.43	LUMLEY ROAD	-101.64	PI - PROPOSED EASEMENT CORNER
PE-16	28+80.05	LUMLEY ROAD	-54.54	PI - PROPOSED EASEMENT CORNER
PE-17	44+02.26	LUMLEY ROAD	-50.00	PI - PROPOSED EASEMENT CORNER
PE-18	43+93.09	LUMLEY ROAD	-60.33	PI - PROPOSED EASEMENT CORNER
PE-19	44+10.89	LUMLEY ROAD	-72.71	PI - PROPOSED EASEMENT CORNER
PE-20	41+58.02	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-21	41+58.02	LUMLEY ROAD	89.05	PI - PROPOSED EASEMENT CORNER
PE-22	313+95.00	COMMERCE BLVD.	65.00	PI - PROPOSED EASEMENT CORNER
PE-23	313+95.00	COMMERCE BLVD.	-53.00	PI - PROPOSED EASEMENT CORNER
PE-24	313+95.00	COMMERCE BLVD.	-97.97	PI - PROPOSED EASEMENT CORNER
PE-25	313+25.13	COMMERCE BLVD.	-175.32	PI - PROPOSED EASEMENT CORNER
PE-26	313+30.92	COMMERCE BLVD.	-180.56	PI - PROPOSED EASEMENT CORNER
PE-27	313+66.08	COMMERCE BLVD.	-194.25	PI - PROPOSED EASEMENT CORNER
PE-28	313+47.39	COMMERCE BLVD.	-195.43	PI - PROPOSED EASEMENT CORNER
PE-29	314+12.59	COMMERCE BLVD.	-123.25	PI - PROPOSED EASEMENT CORNER
PE-31	32+83.82	LUMLEY ROAD	74.26	PI - PROPOSED EASEMENT CORNER
PE-32	32+64.01	LUMLEY ROAD	77.02	PI - PROPOSED EASEMENT CORNER
PE-34	31+38.53	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-35	31+77.09	LUMLEY ROAD	89.56	PI - PROPOSED EASEMENT CORNER
PE-36	31+55.61	LUMLEY ROAD	110.50	PI - PROPOSED EASEMENT CORNER
PE-37	30+96.64	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-38	28+90.16	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-39	29+75.95	LUMLEY ROAD	237.14	PI - PROPOSED EASEMENT CORNER
PE-40	29+48.64	LUMLEY ROAD	249.55	PI - PROPOSED EASEMENT CORNER
PE-41	28+54.74	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-42	16+71.21	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-43	17+06.86	LUMLEY ROAD	97.11	PI - PROPOSED EASEMENT CORNER
PE-44	16+82.93	LUMLEY ROAD	115.21	PI - PROPOSED EASEMENT CORNER
PE-45	16+33.59	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-46	7+33.10	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-47	8+22.49	LUMLEY ROAD	130.77	PI - PROPOSED EASEMENT CORNER
PE-48	7+88.97	LUMLEY ROAD	167.87	PI - PROPOSED EASEMENT CORNER
PE-49	6+58.52	LUMLEY ROAD	50.00	PI - PROPOSED EASEMENT CORNER
PE-50	3+63.20	LUMLEY ROAD	70.76	PI - PROPOSED EASEMENT CORNER
PE-51	3+83.81	LUMLEY ROAD	103.27	PI - PROPOSED EASEMENT CORNER
PE-52	3+53.42	LUMLEY ROAD	140.42	PI - PROPOSED EASEMENT CORNER
PE-53	3+15.01	LUMLEY ROAD	130.91	PI - PROPOSED EASEMENT CORNER
PE-54	2+65.72	LUMLEY ROAD	117.73	PI - PROPOSED EASEMENT CORNER
PE-55	2+57.40	LUMLEY ROAD	94.34	PI - PROPOSED EASEMENT CORNER

CURVE #	DELTA	D	TANGENT	LENGTH	RADIUS	CHORD DIRECTION	CHORD LENGTH
C1	85.78°	S89° 35' 09"W	571.34'	920.79'	615.00'	N47° 31' 19"W	837.17'
C2	17.67°	N53° 53' 44"W	80.04'	158.80'	515.00'	N62° 43' 45"W	158.17'
C3	36.81°	S81° 13' 58"W	171.36'	330.85'	515.00'	S62° 49' 43"W	325.19'
C4	4.89°	S66° 34' 09"W	22.00'	43.96'	515.00'	S54° 07' 25"W	43.95'
C5	15.08°	S89° 36' 29"W	81.38'	161.83'	615.00'	S82° 04' 11"W	161.36'
C6	15.39°	N52° 44' 57"W	83.11'	165.22'	615.00'	N60° 26' 44"W	164.72'
C7	88.24°	N89° 11' 03"W	499.46'	793.18'	515.00'	N45° 03' 43"W	717.08'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S46° 41' 37" W	1383.52
L2	N89° 05' 39" W	71.93
L3	S27° 13' 46" W	114.83
L4	N71° 51' 38" W	1.44
L5	N61° 38' 28" W	71.14
L6	N45° 03' 43" W	92.56
L7	N85° 43' 18" W	25.61
L8	N45° 03' 43" W	95.00
L9	N06° 24' 08" W	25.61
L10	N45° 03' 43" W	356.34
L11	S77° 17' 51" W	51.92
L12	S19° 05' 29" W	34.28
L13	N70° 51' 31" W	60.00
L14	N19° 08' 28" E	29.15
L15	N40° 23' 24" W	62.37
L16	N49° 15' 57" E	59.87
L17	S46° 20' 18" W	22.25
L18	N70° 51' 31" W	178.49
L19	S63° 40' 28" W	87.24
L20	S18° 56' 12" W	60.00
L21	N71° 03' 48" W	118.00
L22	N11° 56' 12" E	60.00
L23	N26° 05' 29" W	84.22
L24	N45° 03' 43" W	356.24
L25	N86° 12' 18" W	24.32
L26	N45° 03' 43" W	97.15
L27	N05° 44' 42" W	25.25
L28	N00° 12' 42" W	65.59
L29	N45° 03' 43" W	257.65
L30	S46° 41' 37" W	1940.27
L32	S46° 41' 37" W	1940.27

RIGHT-OF-WAY POINTS				
POINT	STATION	ALIGNMENT	OFFSET	DESCRIPTION
ROW-1	6+45.94	LUMLEY ROAD	-50.00	PI - RIGHT OF WAY MARKER
ROW-2	20+29.47	LUMLEY ROAD	-50.00	PC - RIGHT OF WAY MARKER
ROW-3	28+75.40	LUMLEY ROAD	-50.00	PI - RIGHT OF WAY MARKER
ROW-4	101+02.65	Mt Herman Road	-30.00	PI - RIGHT OF WAY MARKER
ROW-5	102+39.13	Mt Herman Road	-30.00	PI - RIGHT OF WAY MARKER
ROW-6	102+38.65	Mt Herman Road	-28.62	PI-EX ROW - RIGHT OF WAY MARKER
ROW-7	102+11.49	Mt Herman Road	37.05	PI-EX ROW - RIGHT OF WAY MARKER
ROW-8	31+42.44	LUMLEY ROAD	-50.00	ROW-INT - RIGHT OF WAY MARKER
ROW-9	32+35.00	LUMLEY ROAD	-50.00	PI - RIGHT OF WAY MARKER
ROW-10	32+55.00	LUMLEY ROAD	-68.00	PI - RIGHT OF WAY MARKER
ROW-11	33+50.00	LUMLEY ROAD	-68.00	PI - RIGHT OF WAY MARKER
ROW-12	33+70.00	LUMLEY ROAD	-50.00	PI - RIGHT OF WAY MARKER
ROW-13	37+26.34	LUMLEY ROAD	-50.00	PC - RIGHT OF WAY MARKER
ROW-14	39+00.55	LUMLEY ROAD	-50.00	PI - RIGHT OF WAY MARKER
ROW-15	39+47.12	LUMLEY ROAD	-81.72	PI - RIGHT OF WAY MARKER
ROW-16	39+44.56	LUMLEY ROAD	-115.93	PI - RIGHT OF WAY MARKER
ROW-17	40+20.09	LUMLEY ROAD	-115.76	PI - RIGHT OF WAY MARKER
ROW-18	40+17.77	LUMLEY ROAD	-87.67	PI - RIGHT OF WAY MARKER
ROW-19	40+74.45	LUMLEY ROAD	-50.00	PI - RIGHT OF WAY MARKER
ROW-20	44+37.41	LUMLEY ROAD	-50.00	ROW-INT - RIGHT OF WAY MARKER
ROW-21	44+73.55	LUMLEY ROAD	-56.82	EX ROW - RIGHT OF WAY MARKER
ROW-22	44+75.02	LUMLEY ROAD	-50.00	ROW-INT - RIGHT OF WAY MARKER
ROW-23	45+23.26	LUMLEY ROAD	-50.00	ROW-INT - RIGHT OF WAY MARKER
ROW-24	45+73.14	LUMLEY ROAD	-52.08	PI-EX ROW - RIGHT OF WAY MARKER
ROW-25	42+44.90	LUMLEY ROAD	194.65	EX ROW - RIGHT OF WAY MARKER
ROW-26	41+14.66	LUMLEY ROAD	132.93	EX ROW - RIGHT OF WAY MARKER
ROW-27	41+51.23	LUMLEY ROAD	90.11	EX ROW - RIGHT OF WAY MARKER
ROW-28	42+03.85	LUMLEY ROAD	84.39	EX ROW - RIGHT OF WAY MARKER

RIGHT-OF-WAY POINTS				
POINT	STATION	ALIGNMENT	OFFSET	DESCRIPTION
ROW-29	42:47.68	LUMLEY ROAD	50.00	ROW-INT - RIGHT OF WAY MARKER
ROW-30	40+99.00	LUMLEY ROAD	50.00	PC - RIGHT OF WAY MARKER
ROW-31	40+37.25	LUMLEY ROAD	102.09	PI - RIGHT OF WAY MARKER
ROW-32	40+32.76	LUMLEY ROAD	161.84	PI - RIGHT OF WAY MARKER
ROW-33	39+40.88	LUMLEY ROAD	160.98	PI - RIGHT OF WAY MARKER
ROW-34	39+37.11	LUMLEY ROAD	101.16	PI - RIGHT OF WAY MARKER
ROW-35	38+70.04	LUMLEY ROAD	50.00	PT - RIGHT OF WAY MARKER
ROW-36	37+26.24	LUMLEY ROAD	50.00	PC - RIGHT OF WAY MARKER
ROW-37	33+70.00	LUMLEY ROAD	50.00	PI - RIGHT OF WAY MARKER
ROW-38	33+51.69	LUMLEY ROAD	66.00	PI - RIGHT OF WAY MARKER
ROW-39	32+54.54	LUMLEY ROAD	66.00	PI - RIGHT OF WAY MARKER
ROW-40	32+35.00	LUMLEY ROAD	50.00	PI - RIGHT OF WAY MARKER
ROW-41	31+57.31	LUMLEY ROAD	50.00	PI - RIGHT OF WAY MARKER
ROW-42	28+99.66	LUMLEY ROAD	50.00	PT - RIGHT OF WAY MARKER
ROW-43	20+29.47	LUMLEY ROAD	50.00	PC - RIGHT OF WAY MARKER
ROW-44	7+92.06	LUMLEY ROAD	50.00	PI-EX ROW - RIGHT OF WAY MARKER
ROW-45	1+11.77	LUMLEY ROAD	128.09	PI-EX ROW - RIGHT OF WAY MARKER

		Reference No.	Owner
Reference No.	Owner	1	RDUAA Parcel #0768524522
TE 1	WT 70W LLC Parcel #0768633485	2	RDUAA Parcel #0767324317
TE 2	JBC OVERTON PROPERTIES LLC Parcel #0768739476	3	WT 70W LLC Parcel #0768633485
TE 3	LLEG PROPERTIES LLC Parcel #0768738122	4	RDUAA Parcel #0768731351
TE 4	RALEIGH HO RE LLC Parcel #0768729879	5	RDUAA Parcel #0768723932
TE 5	RALEIGH HO RE LLC Parcel #0768837013	6	LLEG PROPERTIES LLC Parcel #0768738122
TE 6	6421 WESTGATE REALTY LLC Parcel #0768921721	7	RALEIGH HO RE LLC Parcel #0768729879
TE 7	6421 WESTGATE REALTY LLC Parcel #0768828373	8	RDUAA Parcel #0767324317
TE 8 *(2)	REWARD PROPERTIES LLC Parcel #0768732585	9	RALEIGH HO RE LLC Parcel #0768837013
		10	REWARD PROPERTIES, LLC Parcel #0768732585

99.5% DESIGN - NOT RELEASED FOR CONSTRUCTION

[illegible]

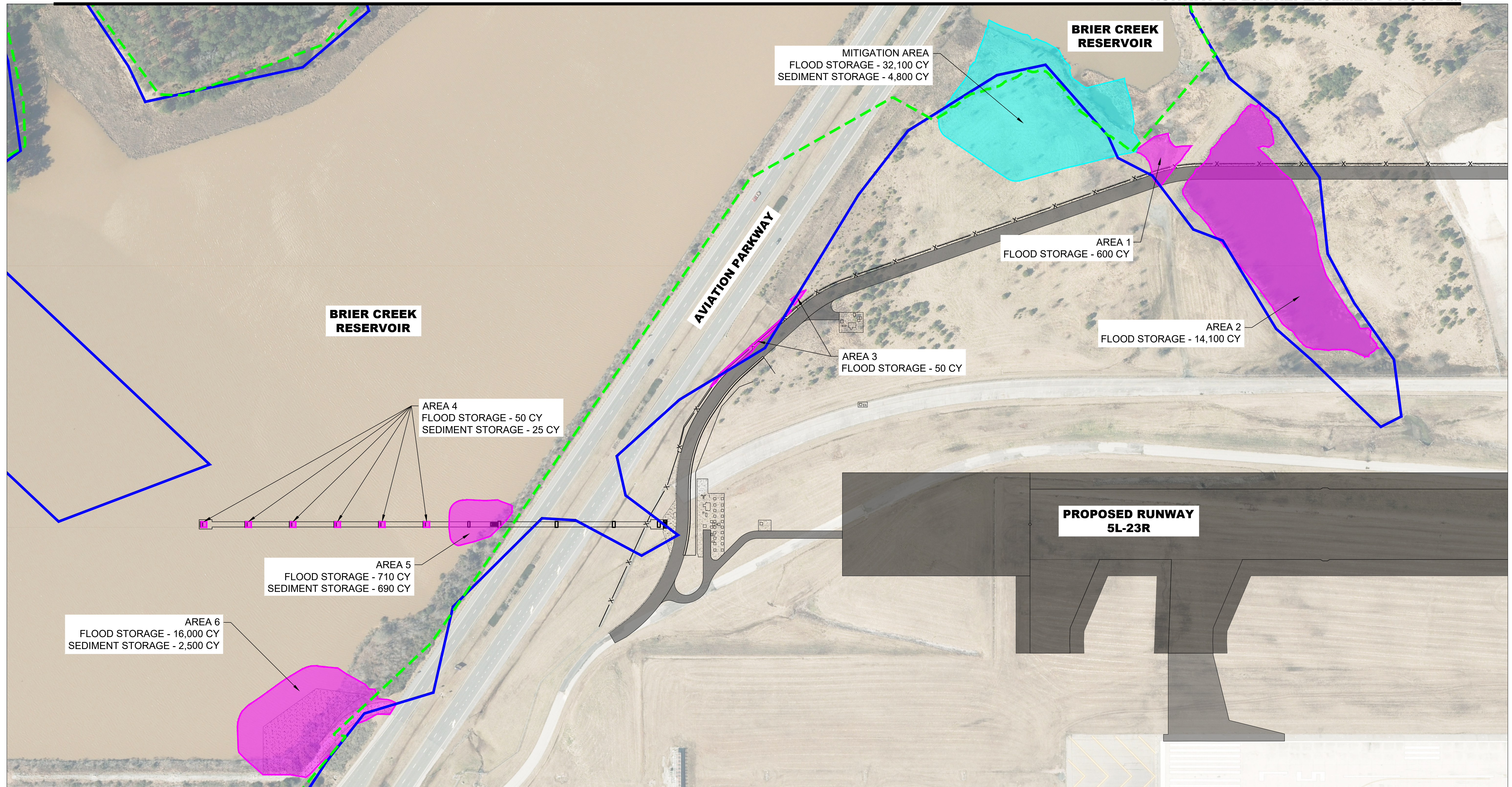


# APPENDIX B



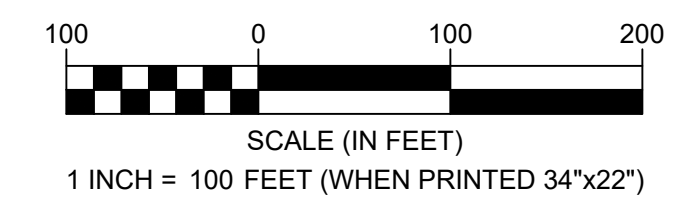


**RALEIGH-DURHAM INTERNATIONAL AIRPORT  
RUNWAY 5L-23R REPLACEMENT PROGRAM**



DATE: 07/08/2025  
DRAWN BY: CDM/SRW  
DATUM: NAD83 North Carolina State Plane, US Foot  
SOURCE: RS&H, Inc.; Weston & Sampson; NC OneMap

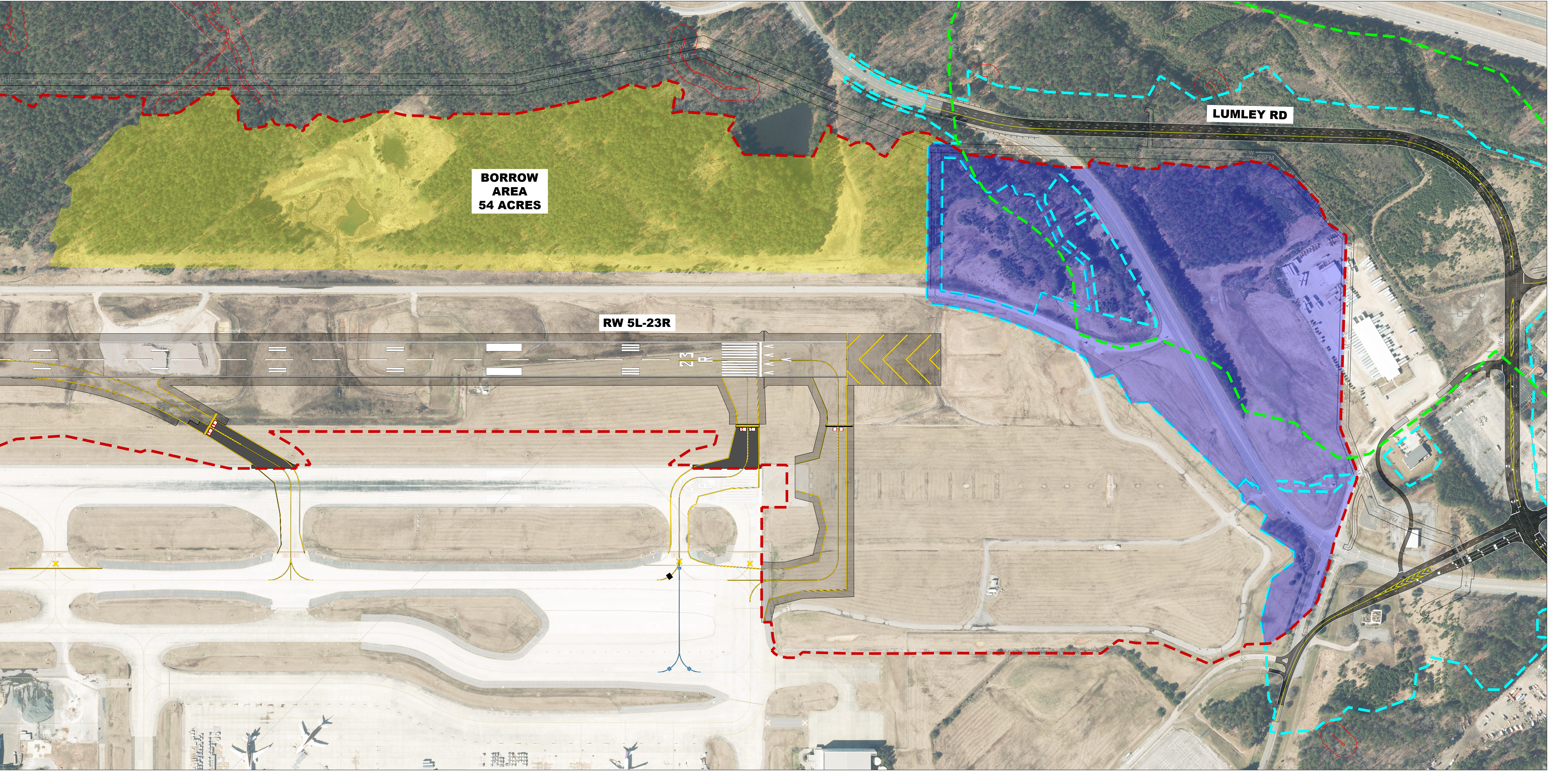
**Legend:**  
PROPOSED IMPACT AREAS  
PROPOSED MITIGATION AREA  
TRACT 1 EASEMENT  
EPA OPERATIONAL UNIT (OU)



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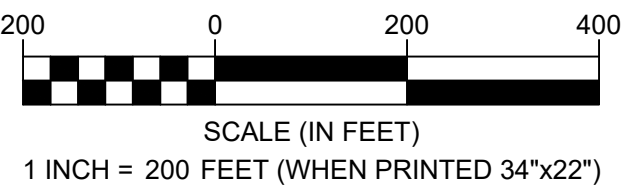




DATE: July 8, 2025  
 DRAWN BY: HVF  
 DATUM: NAD83 North Carolina State Plane, US Foot  
 SOURCE: RS&H, Inc.; Weston & Sampson; NC OneMap

**Legend:**  
 ———— OU2 BOUNDARY  
 ———— LUMLEY ROAD LIMITS OF GRADING  
 ———— RUNWAY LIMITS OF GRADING

— FILL SOIL PLACEMENT AREA  
 — BORROW SITE CUT





# APPENDIX C

**APPENDIX C**  
**STATEMENT OF WORK (SOW)**  
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## 1. INTRODUCTION

- 1.1 Purpose of SOW.** This SOW is attached as an appendix to the Settlement Agreement (“Settlement”) between the United States of America on behalf of the Environmental Protection Agency (“EPA”) and the Raleigh-Durham Airport Authority (“RDUAA”) and is incorporated by reference into the Settlement. This SOW sets forth the procedures and requirements for implementing the Work, as defined in Section III of the Settlement. In particular, this SOW provides more detailed descriptions of the plans and activities that RDUAA is required to perform in completing the Work.
- 1.2** The Response Action means those actions required of RDUAA under the Settlement, as generally described in Section VII of the Settlement. The Response Action defines the activities that the Settlement requires RDUAA to perform to carry out the Projects consistent with requirements of the Settlement but does not include other activities related to the Projects.
- 1.3** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Settlement, have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

## 2. RESPONSE ACTION AND WORK PLANS

- 2.1** RDUAA shall submit the following work plans to EPA and perform the following tasks, within the times specified herein, including the scheduled times in Paragraph 5.2:
- (a) **Material Management Plan (MMP).** RDUAA shall submit a Material Management Plan to EPA for its approval. The purpose of the Material Management Plan is to document protocols that are to be followed by RDUAA and its contractor(s) with respect to the management of soils that do or may contain certain contaminants of concern that will be excavated or displaced in the course of completing the Projects and the Work at the Property. The Material Management Plan must include:
- (1) A description of the overall material management strategy for management of soils that do or may contain certain contaminants of concern, including a proposal for phasing of design and construction, if applicable;
  - (2) A description of the proposed approach to contracting, construction, operation, maintenance, and monitoring of all soil-disturbing activities at the Site;
  - (3) A description of the responsibility and authority of all organizations and key personnel involved with the development of construction design;

- (4) Design plans for implementing post-construction cover requirements identified in the OU-2 ROD for all locations where PCB contamination has been left in place or otherwise required by EPA to be conducted to develop a protective cover system;
- (5) Plans for satisfying permitting requirements, if any, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity;
- (6) Plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements;
- (7) Survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions; and
- (8) Proposed construction schedule and schedule for post-construction implementation of soil cover requirements and engineering controls associated with soils that do or may contain certain contaminants of concern. If a schedule is not known at the time of Material Management Plan completion, the Material Management Plan shall include a communication plan dictating how the construction schedule will be communicated to EPA.
- (9) **Health and Safety Plan (“HASP”).** HASP elements shall be included as part of the Material Management Plan and describe all activities to be performed to protect on-site personnel and area residents from physical, chemical, and all other hazards posed by the Work. RDUAA shall develop the HASP in accordance with EPA’s *Emergency Responder Health and Safety Manual* and Occupational Safety and Health Administration (“OSHA”) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP will cover the anticipated Response Action activities. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment. Within 45 days of submission, EPA will provide notice to RDUAA if the HASP or any portion thereof is not in compliance with relevant provisions of EPA’s *Emergency Responder Health and Safety Manual* and OSHA requirements under 29 C.F.R. §§ 1910 and 1926. Additionally, each contractor completing work that will intersect PCB contaminated soil as defined in the MMP, shall prepare and submit to EPA its respective HASP.
- (10) **Emergency Response Plan (“ERP”).** The ERP must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP shall be included as part of the Material Management Plan and must include:

- (i) Name of the person or entity responsible for responding in the event of an emergency incident;
  - (ii) Plan and date(s) for meeting(s) with landowners adjacent to Property (that portion of the Ward Transformer Superfund Site owned or to be acquired, and used by RDUAA for the Projects), the local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
  - (iii) Notification activities in accordance with ¶ 2.7(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under CERCLA § 103 or EPCRA § 304; and
  - (iv) A description of all necessary actions to ensure compliance with ¶ 2.7 of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (11) RDUAA already has in place a Spill Prevention, Control, and Countermeasures (“SPCC”) Plan (“SPCC Plan”) prepared in accordance with 40 C.F.R. Part 122 (“SPCC Regs”) and as required by Subpart C-9 of its current NPDES Stormwater Permit (NCS000588), issued by the North Carolina Department of Environmental Quality on June 5, 2024 (“Stormwater Permit”). Subpart C-9 of the Stormwater Permit also anticipates that RDUAA will prepare and maintain a site-specific Spill Prevention and Response Procedures (“SPRP”) as a part of the SPCC Plan. The SPCC Plan, including the SPRP, are a part of the Stormwater Pollution Prevention Plan (“SWPPP”) that RDUAA maintains in accordance with Part C of the Stormwater Permit. If requested by EPA, RDUAA shall submit copies of the SPCC Plan, the SPRP, and/or the SWPPP, and any such submitted documents shall be considered to be part attachments to the ERP, all of which are a part of the MMP.
- (b) **Erosion and Sediment Control Plans.** RDUAA shall submit Erosion & Sediment Control Plans to EPA for its contemporaneous review with the N.C. Department of Environmental Quality. The purpose of the Erosion & Sediment Control Plan is to document protocols that are to be followed by RDUAA and its contractor(s) with respect to the installation of construction stormwater management controls necessary for the collection and discharge of stormwater in the course of completing the Projects and the Work at the Property.
- (c) **Institutional Controls Implementation and Assurance Plan (“ICIAP”).** RDUAA shall submit a proposed ICIAP for EPA approval. The ICIAP should describe plans to implement, maintain, monitor, and enforce the Institutional Controls (“ICs”) at the Site. The ICIAP shall include plans to commence

implementing ICs as early as is feasible. The ICIAP also should include procedures for effective and comprehensive review of implemented ICs, procedures for the solicitation of input from affected communities regarding the implementation of ICs, procedures to periodically review and determine if the ICs are having their intended effect, and if not, procedures for the development, approval and implementation of alternative, more effective ICs. RDUAA shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). RDUAA also shall consider including in the ICIAP the establishment of effective Long-Term Stewardship procedures including those described in EPA Memorandum: *Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship* (July 20, 2018). The ICIAP must include the following additional requirements:

- (1) Locations of recorded real property interests (*e.g.*, easements, liens) and resource interests in the property that may affect ICs (*e.g.*, surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
- (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (“ALTA”) Survey guidelines and certified by a licensed surveyor.
- (3) Upon the approval of the ICIAP, EPA shall issue a Notice of Authorization to Proceed regarding the Institutional Controls.

**2.2 Groundwater Monitoring Well Abandonment.** The MMP will identify groundwater monitoring wells on the Property that are to be abandoned. Thirty (30) days prior to abandonment, RDUAA shall notify EPA of the proposed abandonment plans. Additionally, following abandonment, RDUAA has thirty (30) days to notify EPA and submit the required North Carolina abandonment records. RDUAA agrees to abandon identified unused groundwater monitoring well in accordance with the NC Well Abandonment Requirements, as defined in the Settlement.

**2.3 Monitoring Well Modification and Completions.** The MMP will identify groundwater monitoring wells on the Property that are to be extended. Thirty (30) days prior to modification, RDUAA shall notify EPA of the proposed modification and completion plans. Additionally, following completion, RDUAA has thirty (30) days to notify EPA and submit the required North Carolina well records. The extended well(s) will be completed in surface-mounted, secured, and truck traffic-rated manholes at new grade levels.

**2.4 Fencing and Signage.** Within thirty (30) days following the completion of the Projects at the Site, RDUAA shall install any new security fencing and required signage (including those fences and marks required by 40 C.F.R. § 761.61) along or near the perimeter of the

Property to limit public access to portions of the New Runway North RPZ Property and such other areas of the Site as EPA determines to be necessary.

## **2.5 Meetings and Inspections**

- (a) **Preconstruction Conference.** RDUAA shall hold preconstruction conference(s) with EPA and others as directed or approved by EPA. RDUAA shall prepare minutes of the conference and shall distribute the minutes to all Parties.
- (b) **Periodic Communications.** RDUAA shall communicate regularly with EPA during both the design and construction portion of the Response Action and Projects at the Site as necessary, as directed or determined by EPA. RDUAA shall distribute an agenda and list of attendees to all Parties prior to each meeting or telephone call. RDUAA shall prepare minutes of the meetings or calls and shall distribute the minutes to all Parties.
- (c) **Inspections**
  - (1) EPA or its representative shall conduct periodic inspections of the Work. At EPA's request, the Project Coordinator or other designee shall accompany EPA or its representative during inspections.
  - (2) Upon notification by EPA of any deficiencies in the Response Action, RDUAA shall take all necessary steps to correct the deficiencies and/or bring the Response Action into compliance with the approved final cover design, any approved design changes, and/or the approved Material Management Plan. If applicable, RDUAA shall comply with the mutually agreed upon schedule in its notice of deficiency.

## **2.6 Permits**

- (a) As provided in CERCLA § 121(e), and Section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, RDUAA shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- (b) RDUAA may seek relief under the provisions of Section XII (Force Majeure) of the Settlement for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 2.6(a) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.
- (c) Nothing in the Settlement or this SOW constitutes a permit issued under any federal or state statute or regulation.

## 2.7 Emergency Response and Reporting

- (a) **Emergency Action.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, RDUAA shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 2.7(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that RDUAA is required to report under CERCLA § 103 or Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), RDUAA shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 2.7(a) and ¶ 2.7(b) is the RPM, or the EPA Emergency Response Unit, Region 4 (if the RPM is unavailable).
- (d) For any event covered by ¶ 2.7(a) and ¶ 2.7(b), RDUAA shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 2.7 are in addition to any reporting required by CERCLA § 103 or EPCRA § 304.

## 2.8 Off-Site Shipments

- (a) RDUAA may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with CERCLA § 121(d)(3), and 40 C.F.R. § 300.440. RDUAA will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if RDUAA obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) RDUAA may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility’s state and to the RPM. This notice requirement will not apply to any off -Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped;



(3) the schedule for the shipment; and (4) the method of transportation. RDUAA also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. RDUAA shall provide the notice after the award of the contract for Response Action construction and before the Waste Material is shipped.

- (c) RDUAA may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with CERCLA § 121(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Record of Decision. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

## 2.9 Response Action Completion

- (a) **Response Action Completion Inspection.** The Response Action is “Complete” for purposes of this paragraph when it has been fully performed and the Performance Standards have been achieved. RDUAA shall schedule an inspection for the purpose of obtaining EPA’s Certification of Response Action Completion. The inspection must be attended by RDUAA and EPA and/or their representatives.
- (b) **Final Response Action Report.** Following the inspection, RDUAA shall submit a Final Response Action Report to EPA requesting EPA’s Certification of Response Action Completion. The Final Response Action Report should include a description of RDUAA’s actions in implementing all aspects of the Response Action, but is required to include a description of the Projects only as is necessary to understand the Response Action, and the inclusion of that information about the Projects do not constitute any indication that the Projects are a part of the Response Action. Specifically, the Final Response Action Report must:
  - (1) include certifications by a registered professional engineer and by RDUAA’s Project Coordinator that the Response Action is complete; (2) include as-built drawings of the Response Action activities, signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (June 2022), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); and (4) be certified in accordance with ¶ 4.5 (Certification).
- (c) If EPA concludes that the Response Action is not Complete, EPA shall so notify RDUAA. EPA’s notice must include a description of any deficiencies. EPA’s notice may include a schedule for addressing such deficiencies or may require RDUAA to submit a schedule for EPA approval. RDUAA shall perform all activities described in the notice in accordance with the schedule.

- (d) If EPA concludes, based on the initial or any subsequent Final Response Action Report requesting Certification of Response Action Completion, that the Response Action is Complete, EPA shall so certify to RDUAA. This certification will constitute the Certification of Response Action Completion for purposes of the Settlement. Certification of Response Action Completion will not affect RDUAA's remaining obligations under the Settlement.

### **3. REPORTING**

**3.1 Progress Reports.** Commencing with the month following the Effective Date of the Settlement and until EPA approves the Response Action Completion, RDUAA shall communicate to EPA as defined in the Materials Management Plan. Weekly communication of the following items will be emailed directly during work that will intersect PCB contaminated soil as defined in the MMP:

- (a) Field notes from environmental oversight,
- (b) Waste manifest(s),
- (c) O&M logs;
- (d) Weekly milestone status update photographs;
- (e) Sampling results for disposal characterization, and borrow source sampling; and
- (f) A description of all activities relating to the Response Action that are scheduled for the next six weeks;

Upon completion of milestones, RDUAA shall submit summary letter reports to EPA. The reports must cover all activities that took place for that milestone period, and will include a description of the following:

- (a) The actions that have been taken toward achieving compliance with the Settlement.
- (b) A summary of all results of sampling, tests, and all other data received or generated by RDUAA;
- (c) A description of all deliverables that RDUAA submitted to EPA;
- (d) An updated construction schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and
- (e) A description of any modifications to the work plans or other schedules that RDUAA have proposed or that have been approved by EPA.

- 3.2 Notice of Progress Report Schedule Changes.** If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 3.1(d), changes, RDUAA shall notify EPA of such change at least seven days before performance of the activity.

## **4. DELIVERABLES**

- 4.1 Applicability.** RDUAA shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 4.2 (In Writing) through 4.4 (Technical Specifications) apply to all deliverables. Paragraph 4.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 4.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

- 4.2 In Writing.** As provided in ¶ 103 of the Settlement, all deliverables under this SOW must be in writing unless otherwise specified.

- 4.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the Response Action Schedule, as applicable. RDUAA shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data are addressed in ¶ 4.4. All other deliverables shall be submitted to EPA in the electronic form specified by the RPM.

### **4.4 Technical Specifications**

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable ("EDD") format, specifically EQuIS. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (c) Spatial data submitted by RDUAA does not, and is not intended to, define the boundaries of the Site.

- 4.5 Certification.** All deliverables that require compliance with this paragraph must be signed (or electronically signed) by RDUAA's Project Coordinator, or other responsible official of RDUAA, and must contain the following statement:

I certify that to the best of my knowledge after thorough investigation, that the information contained in this submittal or accompanying this certification is true, accurate and complete. I am aware that there are significant penalties for willfully submitting false, inaccurate, or incomplete information.

### **4.6 Approval of Deliverables**

(a) **Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 4.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 4.6(a), RDUAA shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring RDUAA to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 4.6(a) (Initial Submissions) or ¶ 4.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) RDUAA shall take any action required by such deliverable, or portion thereof.

**4.7 Supporting Deliverables.** RDUAA shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. RDUAA shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 6 (References)). RDUAA shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) At this time, additional field sampling is not anticipated. If, however, EPA in consultation with RDUAA, determines that additional sampling is required, RDUAA shall develop a Field Sampling Plan and Quality Assurance Project Plan in advance of any such sampling activities, consistent with the requirements below:
- (1) **Field Sampling Plan (“FSP”).** The FSP addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. RDUAA shall develop the FSP in accordance with

*Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).

- (2) **Quality Assurance Project Plan (“QAPP”).** The QAPP must include a detailed explanation of RDUAA’s quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. RDUAA shall develop the QAPP in accordance with EPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014), and *Guidance for Quality Assurance Project Plans*, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002). RDUAA shall collect, produce, and evaluate environmental information at the Site in accordance with the approved QAPP.
- (b) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the Response Action. RDUAA shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
  - (1) Description of Performance Standards required to be met;
  - (2) Description of activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
  - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
  - (4) Description of corrective action in case of systems failure, including:
    - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Performance Standards;
    - (ii) analysis of vulnerability and additional resource requirements should a failure occur;
    - (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and
    - (iv) community notification requirements; and
  - (5) Description of corrective action to be implemented in the event that Performance Standards are not achieved; and a schedule for implementing these corrective actions.

- (c) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. RDUAA shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).

## 5. SCHEDULES

**5.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines, within the time durations listed in the Response Action Schedule set forth below, or a schedule will be provided to EPA subject to reasonable change and consultation. RDUAA may submit a proposed revised Response Action Schedule for EPA approval. Upon EPA's approval, the revised Response Action Schedule supersedes the Response Action Schedule set forth below, and any previously-approved Response Action Schedule.

### 5.2 Response Action Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	Material Management Plan		Within 30 days after approval of the Erosion and Sediment Control Plan
2	Erosion and Sediment Control Plans		Submit for review contemporaneous with submittals to the N.C. Department of Environmental Quality (NCDEQ). Approved plans shall be provided to EPA within 10 days of NCDEQ approval.
3	ICIAP		Implementation of the ICIAP due 30 days after EPA's Authorization to Proceed
4	Groundwater Monitoring Well Abandonment		Within 30 days of notifying EPA
5	Monitoring Well Completions		Within 30 days of notifying EPA
6	Fencing and Signage		30 days following completion of the Projects
7	O&M Plan		120 days following completion of Response Action activities

## 6. REFERENCES

**6.1** The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the three EPA web pages listed in ¶ 6.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).

- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G90/001 (Apr.1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, EPA/540-R-01-007 (June 2001).
- (o) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (p) Institutional Controls: Third-Party Beneficiary Rights in Proprietary Controls, OECA (Apr. 2004).

- (q) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (r) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2005), <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (u) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (v) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (w) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (x) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sept. 2011).
- (y) Construction Specifications Institute’s MasterFormat, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (z) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sept. 2012)
- (aa) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175446.pdf>.
- (bb) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012), <https://semspub.epa.gov/work/HQ/175449.pdf>.
- (cc) EPA’s Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), [https://www.epaossc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaossc.org/_HealthSafetyManual/manual-index.htm).
- (dd) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (ee) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).



- (ff) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (gg) Quality Management Systems for Environmental Information and Technology Programs -- Requirements with Guidance for Use, ASQ/ANSI E-4 (February 2014), available at <https://webstore.ansi.org/>.
- (hh) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- (ii) Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship (July 20, 2018), <https://www.epa.gov/enforcement/use-advanced-monitoring-technologies-and-approaches-support-long-term-stewardship>.
- (jj) Superfund Community Involvement Handbook, OLEM 9230.0-51 (March 2020). More information on Superfund community involvement is available on the Agency's Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources>.
- (kk) EPA directive CIO 2105.1 (Environmental Information Quality Policy, 2021), [https://www.epa.gov/sites/production/files/2021-04/documents/environmental\\_information\\_quality\\_policy.pdf](https://www.epa.gov/sites/production/files/2021-04/documents/environmental_information_quality_policy.pdf).

**6.2** A more complete list may be found on the following EPA web pages:

- (a) Laws, Policy, and Guidance at <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>;
- (b) [Search Superfund Documents](https://www.epa.gov/superfund/search-superfund-documents) at <https://www.epa.gov/superfund/search-superfund-documents>; and
- (c) Test Methods Collections at: <https://www.epa.gov/measurements/collection-methods>.

**6.3** For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after RDUAA receives notification from EPA of the modification, amendment, or replacement.

# APPENDIX D

WAKE COUNTY, NC 125  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
11/22/2013 AT 12:11:08

BOOK:015511 PAGE:00003 - 00074

**AFFIDAVIT OF CORRECTION OF TYPOGRAPHICAL OR OTHER MINOR ERROR**  
[N.C.G.S. 47-36.1]

Prepared by and return to: Smith Anderson Law Firm (STP)) Hold for Box 181

Each undersigned Affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the **Declaration of Land Use Restrictions For a Federal Superfund Site** (name or type of original instrument being corrected) recorded on **April 23, 2013** (date) in Book **15239**, Page **736**, Wake County Registry, by and between **DeNovo Morrisville, LLC, a Delaware Limited Liability Company** (collectively, "Grantors" or "Declarants") and **Ward Transformer Site Trust, Grantee** (original parties) contained the following typographical or other minor error:

**The Approval and Certification of The United States Environmental Protection Agency was not signed and the referenced "Attachments" were inadvertently omitted.**

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the (check one):

- ☒ **X** Drafter of original instrument being corrected  
☐ Closing attorney for transaction involving instrument being corrected  
☐ Attorney for grantor/mortgagor named above in instrument being corrected  
☐ Owner of the property described in instrument being corrected  
☐ Other (Explain: \_\_\_\_\_)

A copy of the original instrument (in part or in whole) (X) is / ( ) is not attached.

[Signature]

Signature of Affiant

Print or Type Name: Stephen T. Parascandola

Signature of Affiant

Print or Type Name: \_\_\_\_\_

State of NORTH CAROLINA County of ORANGE

Signed and sworn to (or affirmed) before me, this the  
22 day of November, 2013.

[Signature]

Notary Public Hannah J. Chase

My Commission Expires: 12/25/2017



WAKE COUNTY, NC 345  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
04/23/2013 AT 15:20:14

BOOK:015239 PAGE:00736 - 00743

**DECLARATION OF LAND USE RESTRICTIONS FOR A FEDERAL SUPERFUND SITE**

Prepared by Smith Anderson Law Firm (STP)  
Hold for Box 181

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**

**DECLARATION OF LAND USE RESTRICTIONS  
FOR A FEDERAL SUPERFUND SITE**

**For Property Owned By: DeNovo Morrisville, LLC (owner)**

**Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

WHEREAS, DeNovo Morrisville, LLC, a Delaware limited liability company ("DeNovo"), is the owner in fee simple of a tract of land located at 6848 Mt. Herman Road, Cedar Fork Township, Wake County, North Carolina, as more particularly described in the instrument recorded in Book 11642, Page 1643, Wake County Registry (the "Property");

WHEREAS, Estes Express Lines, a Virginia corporation ("Estes"), with an address of 3901 W. Broad Street, Richmond, Virginia 23230, has a leasehold interest in the Property as described in that Memorandum of Lease recorded in Book 5169, Page 730, Wake County Registry;

WHEREAS, this Declaration of Land Use Restrictions (hereinafter "Declaration") is given this 30<sup>th</sup> day of October 2012, by DeNovo and Estes ("Grantors" or "Declarants"), to the Ward Transformer Site Trust (hereinafter "Grantee"), having an address of 1133 Penn Avenue, Pittsburgh, Pennsylvania 15222;

WHEREAS, the Property is contaminated with hazardous substances, pollutants, or contaminants and is part of a Superfund Site (hereinafter referred to as the "Site") under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and as set forth in an Administrative Settlement Agreement and Order on Consent for Removal Action dated September 16, 2005, entered by the United States Environmental Protection Agency in CERCLA Docket No. CERCLA-04-2005-3778 (the "Settlement Agreement"); and

WHEREAS, this Declaration is part of a removal action plan for the Site approved by the United States Environmental Protection Agency ("EPA") and is entered for the purpose of protecting public health and the environment.

NOW, THEREFORE, Declarants declare that the Property shall be held, leased, sold, encumbered, conveyed, and used subject to the covenants and restrictions set forth herein, which shall run with the land and every part thereof or interest therein and shall be binding upon all owners, tenants, and other parties having any right, title or interest in the Property or any part thereof, and their respective heirs, successors, and assigns.

1. **Enforcement.** The land use restrictions set forth in this Declaration are an integral part of the removal action plan for the contamination at the Site. Adherence to the restrictions is necessary to protect public health and the environment. The Grantee shall be entitled to enforce the terms of this instrument. It is the intention of Declarants and Grantee that, to the extent allowed by law, EPA is a third party beneficiary of this Declaration and, as such,

has the authority to enforce these restrictions. It is expressly agreed that EPA is not a recipient of any real property interest under this Declaration. This Declaration shall inure to the benefit of, and be enforceable by Grantee and EPA. Any attempt to cancel this Declaration without the prior written approval of EPA or its successor in function shall be subject to enforcement, to the extent allowed by law, by EPA. The failure by any party required or authorized to enforce any of the land use restrictions or provisions of this Declaration shall in no event be deemed a waiver of the right to enforce the same or any other restriction or provision thereafter.

2. **Term, Amendment, Replacement, and Termination.** This Declaration shall continue in perpetuity until and unless a document is recorded in the Wake County Registry evidencing the written concurrence of EPA to the amendment, replacement, or termination of this Declaration. Concurrence to terminate the Declaration shall be granted upon achievement of cleanup levels that allow for unrestricted use and unlimited exposure. Any amendment or replacement of this Declaration shall be granted upon the written agreement of Grantors, Grantee and EPA and/or their successors and assigns. Upon recordation of EPA's concurrence, this Declaration shall be null, void, and of no effect whatsoever.

3. **Restrictions on Use of Property.** The Property is hereby subject to the following restrictions within the Restricted Excavation Areas identified on Attachments A and B:

- (a) Removal of those portions of building structures within the Restricted Excavation Areas shown on Attachment A, such that soils underneath are exposed, may only be performed for the activities set forth in Section 3.(d) i. through iv. below.
- (b) The soil within one (1) foot of those parts of building structures within the Restricted Excavation Areas shown on Attachment B, excluding those parts of building structures within the Restricted Excavation Areas shown on Attachment B that are adjacent to the concrete apron slabs, shall not be disturbed below a depth of six (6) inches, except for the activities set forth in Section 3.(d) i. through iv. below.
- (c) The soil at all other locations within the Restricted Excavation Areas shown on Attachment B, except as provided in (a) above, shall not be disturbed below a depth of two (2) feet, except for the activities set forth in Section 3.(d) i. through iv. below.
- (d) The soil within the non-disturbance limits and depths as defined in Section 3.(a) through (c), above, may only be disturbed for the following activities:
  - i. conducting investigations relating to contamination at or near the Site;
  - ii. obtaining samples;
  - iii. assessing the need for, planning, or implementing additional response actions at or near the Site; or

- iv. conducting site development or redevelopment involving soil excavation or disturbance done in accordance with a soil management plan approved by EPA.

4. **Access.** The Grantee, EPA, and the State of North Carolina, and their representatives, contractors, subcontractors, successors, and assigns shall have a right of access at all reasonable times to the Property to conduct response activities, including, but not limited to, a removal action pursuant to the September 14, 2004 Enforcement Action Memorandum, and all amendments thereto, as well as Revision 7 of Addendum No. 2 – Removal Action Plan (RAP), attached hereto as Attachments C and D, respectively. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Declarants' operations by such entry and response.

5. **Severability.** If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

6. **Representations and Warranties.** Declarants hereby represent and warrant that:

- (a) DeNovo holds fee simple title to the Property;
- (b) Estes holds a leasehold interest in the Property as described in the Memorandum of Lease recorded in Book 5169, Page 730, Wake County Registry;
- (c) Declarants have the power and authority to enter into this Declaration, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- (d) Declarants have advised EPA that no other persons own an interest in or hold an encumbrance on the Property; and
- (e) this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Declarants are parties or by which Declarants may be bound or affected.

7. **Future Sales, Leases, Conveyances and Transfers.** When any portion of the Restricted Excavation Areas is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the real property being sold, leased, conveyed, or transferred is a portion of a contaminated area of the site, together with a reference by book and page to the recordation of this Declaration.

*[Signature Page(s) to Follow]*



IN WITNESS WHEREOF, DeNovo has executed this Declaration on this 30<sup>th</sup> day of October, 2012.

DeNovo Morrisville, LLC  
A Delaware limited liability  
company

By: [Signature]

Name: Jonathon K. Markoff

Title: Managing Member

Date: October 30, 2012

STATE OF Illinois

COUNTY OF Cook

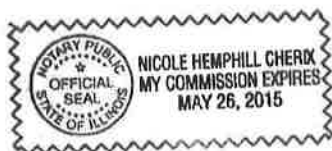
I, Nicole Hemphill Cherix, a Notary Public of Cook County, State of Illinois, do hereby certify that Jonathon Markoff personally appeared before me this day and acknowledged that he/she is managing member of DeNovo Morrisville, LLC, a Delaware limited liability company, and that he/she, as Jonathon Markoff, being authorized to do so, executed the foregoing instrument on behalf of the company.

WITNESS my hand and official seal this 30 day of October, 2012.

Nicole Hemphill Cherix  
Notary Public

My Commission expires: 5/26/2015

[SEAL]



IN WITNESS WHEREOF, Estes has executed this Declaration on this 30<sup>th</sup> day of October, 2012.

**Estes Express Lines**  
a Virginia corporation

By: [Signature]

Name: ANGELA J. MAIDMENT

Title: VICE PRESIDENT - CORPORATE REAL ESTATE

Date: 10/30/12

STATE OF Virginia

COUNTY OF Richmond

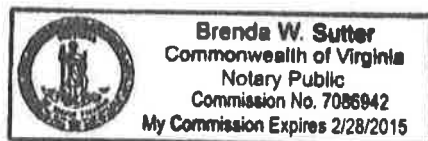
I, Brenda W. Sutter, a Notary Public of  
Richmond County, State of Virginia, do hereby  
certify that Angela J. Maidment personally appeared  
before me this day and acknowledged that he/she is V.P. of Real Estate of  
**ESTES EXPRESS LINES**, a Virginia corporation, and that he/she, as  
V.P. of Real Estate, being authorized to do so, executed the foregoing  
instrument on behalf of the company.

WITNESS my hand and official seal this 30<sup>th</sup> day of October, 2012.

[Signature]  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]



**APPROVAL AND CERTIFICATION OF**  
**THE WARD TRANSFORMER SITE TRUST**

The foregoing Declaration of Land Use Restrictions is hereby approved and certified this  
30<sup>th</sup> day of OCTOBER, 2012.

By: Thomas A. Chanson  
Francis Trustee

**WAKE COUNTY**  
**REGISTER OF DEEDS**  
**ADDED FOR SCANNING**  
**PURPOSE ONLY**

**APPROVAL AND CERTIFICATION OF**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

The foregoing Declaration of Land Use Restrictions is hereby approved and certified this  
10<sup>th</sup> day of JANUARY, 2013.

By: 

Franklin E. Hill, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 4

**WAKE COUNTY**  
**REGISTER OF DEEDS**  
**ADDED FOR SCANNING**  
**PURPOSE ONLY**

BOOK:015239 PAGE:00736 - 00743

Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.



**Wake County Register of Deeds**  
**Laura M. Riddick**  
**Register of Deeds**

**This Customer Group**  
# of Time Stamps Needed

**This Document**  
New Time Stamp  
# of Pages

89

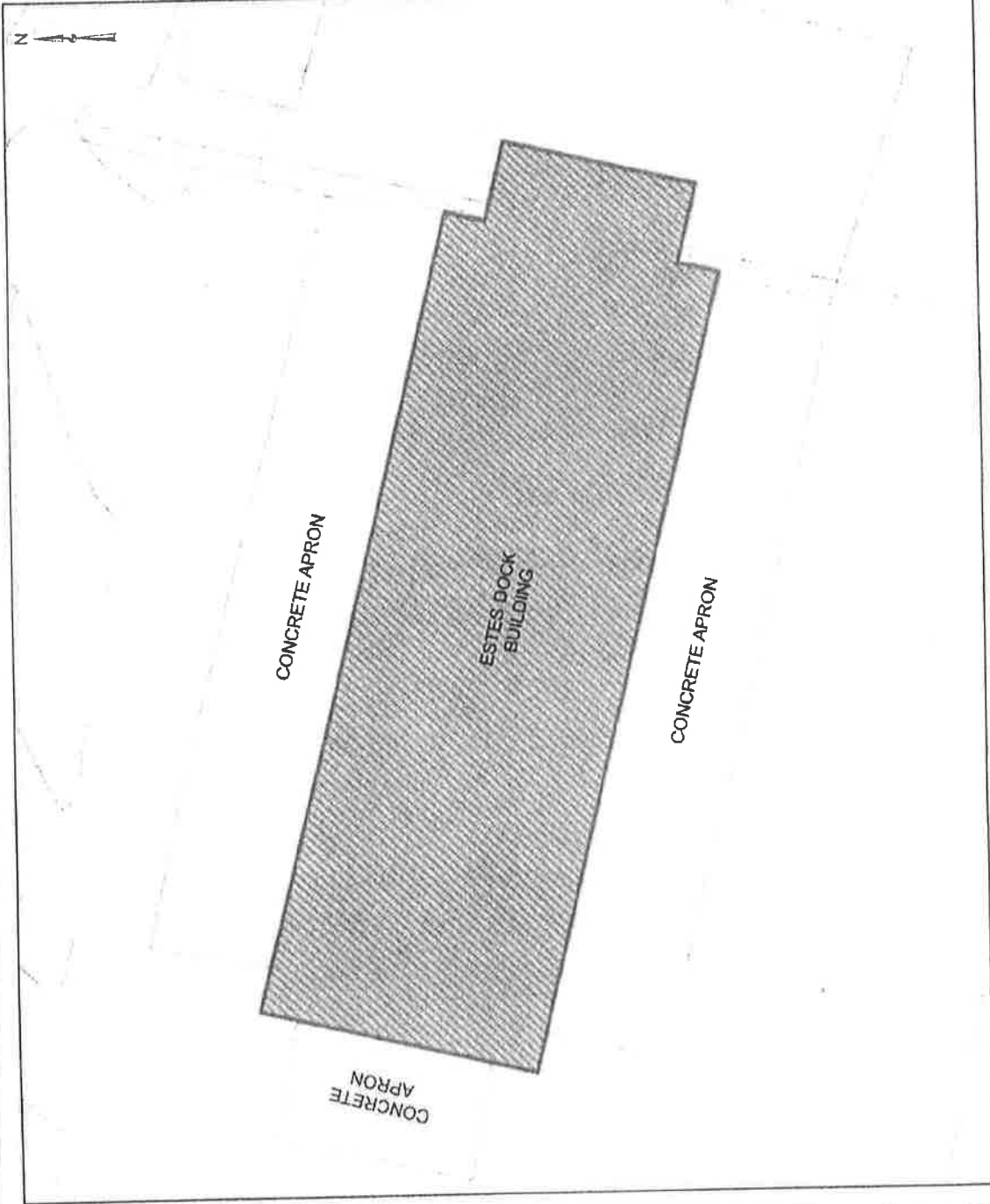
22.004-8/15/11

## Attachment A

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**

LEGEND

- Property Boundary
- Restricted Excavation Area



NOTES

Date set of August 31, 2011

REFERENCE

Waste Control, Inc., 1995, 2002  
 Waste Control, Inc., 2002  
 Planning Engineering, Inc., 2002  
 Planning Engineering, Inc., 2002



Waste Transformer Superfund Site  
 Raleigh, North Carolina

Restricted Excavation Area

PROJECT	WASTE TRANSFORMER SUPERFUND SITE	SCALE	AS SHOWN	DATE	10/1/02
DESIGNED BY	WASTE CONTROL, INC.	CHECKED BY	WASTE CONTROL, INC.	DATE	10/1/02
DRAWN BY	WASTE CONTROL, INC.	CHECKED BY	WASTE CONTROL, INC.	DATE	10/1/02
DATE	10/1/02	DATE	10/1/02	DATE	10/1/02

Golden Associates  
 Raleigh, North Carolina

Attachment A

## Attachment B

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



LEGEND

- Property Boundary
- ▨ Restricted Excavation Area



NOTES

Date as of August 31, 2011

REFERENCE

Waste County GIS, 1998, 2002  
 Wastco Solutions, Inc., 2005  
 Proving Engineering, Inc., 2006, 2007  
 Project: WAST County State Phase 2 Data NAD 83



PROJECT

Ward Transformer Superfund Site  
 Raleigh, North Carolina

TITLE

Restricted Excavation Area



Golder  
 Associates

NO.	DATE	BY	FOR
1	08/31/11	WJ	Final

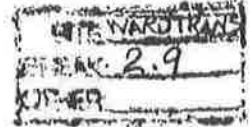
Attachment B

## Attachment C

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960



29 0001

4WD-SRSEB

**ENFORCEMENT ACTION MEMORANDUM**

Subject: Request for a Removal Action at the Ward Transformer Site in Raleigh,  
North Carolina

From: Luis E. Flores  
Remedial Project Manager

To: Winston A. Smith, Director  
Waste Management Division

Site ID#: A4S4

**I. PURPOSE:**

The purpose of this Action Memorandum is to request and document approval of the proposed removal action described herein for the Ward Transformer Site (the Site) in Raleigh, North Carolina. The Site was listed on the National Priorities List (NPL) on April 30, 2003. Sample collections activities for the EPA lead Remedial Investigation (RI) began in April 2003 and results from the investigation are documented in the RI report dated September 2004. The investigation confirmed the presence of hazardous substances in surface soils, sediments and fish. This Site was referred to EPA's Emergency Response and Removal Branch (ERRB) by EPA's Superfund Remedial and Site Evaluation Branch in July 2004 for a removal assessment.

**II. SITE CONDITIONS AND BACKGROUND:**

CERCLIS ID Number: NCD 003 202 603

Removal Category: Time-Critical Removal Action

10135629

**A. Site Description:**



**1. Removal Evaluation:**

The Site consists of an active facility owned by Ward Transformer Company, Inc., and operated by Ward Transformer Sales and Services, Inc. It was built on

approximately 11 acres of previously undeveloped land in 1964 and has housed transformer reconditioning and sales operations since that time. Sample collection activities for the EPA fund lead Remedial Investigation began in April 2003. The scope of the investigation included the Ward Transformer facility property itself, surrounding properties, and the water bodies downgradient. Surface water samples, sediment samples, fish samples, groundwater samples, and soil samples were collected as part of this investigation.

PCB contamination was found in surface and subsurface soil in areas around the Ward Transformer facility inside and outside the fenced area. PCBs were detected in sediment from samples collected from the Unnamed Tributary to Little Brier Creek, Little Brier Creek, Brier Creek Reservoir, Brier Creek and Crabtree Lake. Fish contamination was found in all these areas and fish advisories against eating the fish from these areas were issued.

The removal assessment identified 4 main areas requiring immediate attention:

**Unacceptable risk to current employees due to high levels of contaminants at the facility:**

The Baseline Risk Assessment conducted at the facility concludes that there is an unacceptable risk to employees due to potential soil exposure to high levels of PCB contamination at the facility.

**Uncontrolled surface water run-off from highly contaminated areas discharging into the Unnamed Tributary to Little Brier Creek:**

Inspection of the area during the removal assessment indicates that surface water run-off from the western portion of the facility where transformers, construction debris, and scrap metal are stored (Transformer Storage Area) is not completely controlled allowing discharges into areas outside the facility leading to the Unnamed Tributary to Little Brier Creek. Soil with polychlorinated Biphenyls (PCBs) concentrations up to 1,700 parts per million (ppm) were found in the Transformer Storage Area.

**Uncontrolled surface water run-off from highly contaminated areas discharging in front of the main building:**

Soil samples collected near the front of the facility's main building contain PCBs as high as 160 ppm. Access to these areas is not restricted. Surface water run-off from these areas discharges into a drainage ditch along Mount Herman Road.

### **Storm Water Lagoon**

Sediments from the lagoon contain levels of PCBs as high as 2,900 ppm. The integrity of the lagoon and its remaining useful life are not known. As a result, the lagoon may pose a threat of release.

### **2. Physical Location:**

The Ward Transformer Site is located at Mount Herman Road, north of Aviation Parkway, in a predominantly industrial area of Raleigh, Wake County, North Carolina. The Site is located 600 feet south of the Northern Wake Expressway (outer loop), 1000 feet southwest of US highway 70, and is adjacent to property owned by the Raleigh-Durham International Airport. Estes Transport Co., a trucking company, leases the property to the south. Across Mount Herman Road from the facility is Triangle Coatings where plastic and metal parts are painted.

An Unnamed Tributary to Little Brier Creek originates at the facility and descends through moderate to steep topography into Little Brier Creek approximately 1 mile from the facility. Little Brier Creek continues and discharges into Brier Creek Reservoir located about 2.5 miles from the facility. Brier Creek Reservoir flows into Brier Creek and discharges into Lake Crabtree, a recreational lake located approximately 3 miles from the facility.

Wetlands and the potential presence of threatened and/or endangered species within the impacted watershed have been identified.

### **3. Site Characteristics:**

The Ward Transformer Site consists of an active facility owned by Ward Transformer Company, Inc., and operated by Ward Transformer Sales and Service, Inc. (collectively "Ward"). Ward manufactures, repairs, reconditions, rebuilds, purchases, and sells transformers, switchgear, and other similar types of electrical equipment. The facility property contains an electrical equipment reconditioning building, offices, an area where transformers, construction debris, and scrap metal are stored (Transformer Storage Yard), storage tanks, a storm water lagoon, and a wastewater treatment plant. The northern portion of the property, now vacant, was leased until 2002 to Horizon Forest Products, a lumber supply business. The reconditioning building, offices, Transformer Storage Yard, and the adjacent Horizon Forest Products facility are surrounded by an eight-foot-high chain link fence. The lagoon, located on the southwest corner of the facility property, is fenced on three sides by an eight-foot-high chain link fence. The downgradient (or dam) side of the lagoon is fenced by a low wire fence that is easy to step over, so that access to the lagoon is not completely restricted.

**4. Release or Threatened Release into the Environment of a Hazardous substance, or pollutant or Contaminant:**

This Site constitutes a release of hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14). Analytical results from the Remedial Investigation conducted by EPA documents:

- PCB contamination with soil concentrations above removal action levels in areas in front of the Ward Transformer main office building including a drainage ditch along Mount Herman Road.
- PCB contamination with soil concentrations above removal action levels in the Transformer Storage Yard.
- PCB contamination with soil concentrations above removal action levels in areas outside the facility property leading to the Unnamed Tributary to Little Brier Creek.
- PCB contamination with soil and sediment concentrations above removal action levels in the Storm Water Lagoon.
- PCBs were detected in sediments from lower reaches of Little Brier Creek, Brier Creek Reservoir, Brier Creek, and Lake Crabtree.
- Elevated levels of PCBs were detected in fish from lower reaches of Little Brier Creek, Brier Creek Reservoir, Brier Creek and Lake Crabtree.
- Current and potential routes for releases of hazardous substances exist at the Site. These routes are:
  - Current - Surface water runoff from areas containing high levels of PCB contaminated soil is currently migrating into the Unnamed Tributary to Little Brier Creek behind the facility and into the drainage ditch along Mount Herman Road.
  - Potential - There is a potential risk of contaminated surface water, soil, and sediments from the Storm Water Lagoon being released into the surrounding environment if the construction integrity of the lagoon is not confirmed.
- A current unacceptable risk to employees at the facility exists due to potential exposure to highly contaminated soil at the facility.

**5. NPL Status:**

The Ward Transformer Site was proposed to be included in the National Priorities List (NPL) on September 5, 2002 and was made final on April 30, 2003.

As required for all NPL sites, the Agency for Toxic Substances and Disease Registry (ATSDR) is conducting its Public Health Assessment for this Site.

**B. Other Actions to Date:****1. Previous Actions:**

- A Remedial Investigation/Feasibility Study (RI/FS) information meeting was conducted by EPA and ATSDR on March 13, 2003. The meeting was held at the Morrisville Commerce Building in Morrisville, North Carolina.
- Sample collection activities for the EPA lead Remedial Investigation began in April 2003.
- The first phase of the Remedial Investigation report was completed in September 2004.

**2. Current Actions:**

- A second phase of the Remedial Investigation is currently being conducted. As part of this second phase, additional fish and sediment samples will be collected from areas downgradient of Lake Crabtree to determine the extent of sediment and fish contamination. Also, additional groundwater monitoring wells will be installed in areas close to the Ward Transformer property to assess groundwater in the area.
- During the months of July and August 2004, a group was formed to assist in assessing the extent of fish and sediment contamination downgradient of Lake Crabtree. The group includes representatives from: EPA and North Carolina Superfund, Weston Solutions (EPA's contractor), North Carolina Occupational and Environmental and Epidemiology Branch, US Fish and Wild Life Service, North Carolina Wild Life Resource Commission and North Carolina State University. The group also includes: Wake County Parks Director, Lake Crabtree Manager, and William Umstead State Park Manager.

**C. State and Local Authorities' Role:**

**1. State and Local Actions to date:**

- NCDENR conducted the initial site investigations including a Preliminary Assessment (PA), Site Inspection (SI) and Expanded Site Inspection (ESI) to collect enough information to prepare the Hazard Ranking System (HRS) package for the Site. Due to the high HRS score, the Site was referred to EPA's Superfund Remedial and Site Evaluation Branch for a Remedial Investigation.
- On December 8, 2003, the State of North Carolina Department of Health and Human Services issued a fish consumption advisory for the lower reaches of Little Brier Creek and the Brier Creek Reservoir due to high levels of PCBs detected in fish samples collected during the Remedial Investigation.
- On May 7, 2004, the State of North Carolina Department of Health and Human Services issued a second fish consumption advisory for Brier Creek and Lake Crabtree due to high levels of PCBs detected in fish samples collected during the Remedial Investigation.
- EPA and NCDENR continue to work together at this Site.

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

**A. Threats to Public Health or Welfare:**

Elevated levels of PCBs present in on-site soils pose the following threats to public health or welfare as listed in Section 300.415 (b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

*- Section 300.415 (b)(2)(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.* Surface soils are contaminated with elevated levels of PCBs (up to 1,700 ppm). ATSDR's initial release of its Public Health Assessment for the Site concludes that exposure of Site workers to high PCB concentrations in soil could contribute to an increase theoretical risk of developing cancer.

Elevated PCB levels in soil from the Ward Transformer facility continues to be a source of PCB contamination to sediments and fish from the Unnamed Tributary



to Little Brier Creek, the lower reaches of Little Brier Creek, the Brier Creek Reservoir, Brier Creek, and Lake Crabtree. ATSDR's initial release of its Public Health Assessment for the Site concludes that edible portions of fish from these waters have PCBs at levels high enough to increase the theoretical risk of adverse cancer and non-cancer health effects for people who eat these fish regularly. The State of North Carolina Department of Health and Human Services issued fish consumption advisories for these waters and EPA has posted signs with the advisory. In addition to posting the fish advisories, the sources of PCB contamination to the watershed located at the Ward Transformer facility need to be controlled.

*- Section 300.415 (b)(2)(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage container, that may pose a threat of release.* The storm water lagoon on site was built in 1972 and is located on the southern portion of the property. The dam side of the lagoon is directly upgradient of the Unnamed Tributary to Little Brier Creek. The lagoon volume is estimated to be 14.3 acre-feet or 32,073 cubic yards and its depth is estimated to be around 8 feet. Sediments in the lagoon contain PCBs with concentrations as high as 2,900 ppm. The integrity and remaining useful life of the lagoon is not known.

*- Section 300.415 (b)(2)(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.* Elevated levels of PCBs were detected in surface soil in areas not controlled by the existing storm water run-off system.

Results from the Remedial Investigation show on going contaminant migration into the Unnamed Tributary to Little Brier Creek from highly contaminated areas behind the facility with concentrations as high as 1,700 ppm PCB.

The investigation also shows PCB contamination migrating from the front of the main building of the facility into the drainage ditch along Mount Herman Road. PCB concentrations in these areas are as high as 160 ppm.

*Section 300.145 (b)(2)(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.* The existing storm water run-off control system at the facility is not collecting all storm water run-off. Evidence shows that the storm water breaches the Transformer Storage Yard curbing during heavy rain events. As a result, surface water run-off from these highly contaminated areas is an on-going source of contamination to the drainage ditch along Mount Herman Road and the Unnamed Tributary to Little Brier Creek outside of the facility.

PCBs found in sediment and fish along the Unnamed Tributary to Little Brier Creek, the lower reaches of Little Brier Creek, the Brier Creek Reservoir, Brier Creek, and Lake Crabtree indicate that significant PCB contamination is migrating from the facility.

**B. Threats to the Environment:**

Elevated levels of PCBs present in on-site soils pose the following threats to public health or welfare as listed in Section 300.415 (b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP):

*- Section 300.415 (b)(2)(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.* Elevated PCB levels in soil from the Ward Transformer facility continue to be a source of PCB contamination to sediments and fish from the Unnamed Tributary to Little Brier Creek, the lower reaches of Little Brier Creek, the Brier Creek Reservoir, Brier Creek, and Lake Crabtree. Results from the Remedial Investigation and the Screening Level Ecological Risk Assessment (SLERA) indicate that PCB levels in water/sediments in the above-mentioned water bodies are already at concentrations high enough such that they may pose a risk to piscivorous mammals and/or birds.

*Section 300.415 (b)(2)(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage container, that may pose a threat of release.* The storm water lagoon was built in 1972 and is located on the southern portion of the property. The dam side of the lagoon is directly upgradient of the Unnamed Tributary to Little Brier Creek. The lagoon volume is estimated to be 14.3 acre-feet or 32,073 cubic yards and its depth is estimated to be around 8 feet. Sediments in the lagoon contain PCBs with concentrations as high as 2,900 ppm. The integrity and remaining useful life of the lagoon is not known. Results from the Remedial Investigation and the Screening Level Ecological Risk Assessment (SLERA) indicate that PCB levels in water/sediments from the water bodies downgradient of the lagoon are already at concentrations high enough such that they may pose a risk to piscivorous mammals and/or birds.

*- Section 300.415 (b)(2)(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.* Elevated PCB levels in soil from the Ward Transformer facility continue to be a source of PCB contamination to sediments and fish from the Unnamed Tributary to Little Brier Creek, the lower reaches of Little Brier Creek, the Brier Creek Reservoir, Brier Creek, and Lake Crabtree. Results from the Remedial Investigation and the

Screening Level Ecological Risk Assessment (SLERA) indicate that PCB levels in water/sediments from the above-mentioned water bodies are already at concentrations high enough such that they may pose a risk to piscivorous mammals and/or birds.

- *Section 300.145 (b)(2)(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.* Any heavy rain accelerates migration of PCBs from the Ward Transformer facility into the Unnamed Tributary to Little Brier Creek, the lower reaches of Little Brier Creek, the Brier Creek Reservoir, Brier Creek, and Lake Crabtree. Results from the Remedial Investigation and the Screening Level Ecological Risk Assessment (SLERA) indicate that PCB levels in water/sediments from the above-mentioned water bodies are already at concentrations high enough such that they may pose a risk to piscivorous mammals and/or birds.

#### IV. ENDANGERMENT DETERMINATION:

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

#### V. PROPOSED ACTION:

##### A. Proposed Actions:

##### 1. Proposed Action Description:

The required Removal Action is divided in two parts:

##### a) Recontamination Prevention Actions

(i) Construction of a storm water management/spill control system that effectively addresses all surface water run off or spills from all areas of the facility in accordance with all applicable Federal, State, or local laws, regulations, ordinances, or permits and prevents the release of any hazardous substances outside of the facility;

(ii) Inspection of the existing storm water lagoon by an expert to certify its construction, actual condition, and remaining useful life;

(iii) Implement any recommendations made by the expert to improve storm water lagoon.

**b) Contamination Removal**

- (i) Further delineate and remove soil with concentrations exceeding 1 ppm PCB, from all areas NOT effectively controlled by the storm water management/spill control system;
- (ii) Further delineate and remove soil with concentrations exceeding 25 ppm PCB, from all areas effectively controlled by the storm water management/spill control system;
- (iii) Arrange for the ultimate disposal and/or treatment of all excavated soil and debris in a manner satisfactory to EPA;
- (iv) To the maximum extent practicable, return areas which are disturbed by the removal action to their pre-removal state.

**2. Contribution to Remedial Performance**

The proposed removal action is necessary to address the threats discussed in Section III which meet the NCP Section 300.415 (b) (2) removal criteria. If all actions are implemented as described in this document, future remedial action for soils at the facility is unlikely. The Remedial Investigation for groundwater is on-going, as well as, the investigation of all water bodies affected by the migration of contaminants from the facility.

The removal action contemplated in this Action Memorandum would be consistent with any remedial action.

**3. Description of Alternative Technologies**

No formal evaluation of alternative technologies has been made. Such an evaluation will take place before the disposal phase of the response action and will be documented at that time.

**4. Applicable or Relevant and Appropriate Requirements (ARARs)**

A letter was sent to the state of North Carolina requesting ARARs for the Site, but no response has been received as of this date. Therefore, ARARs for this Site have not been conclusively determined. Efforts will be made to comply with the state ARARs to the extent practicable. EPA will ensure compliance with the NCP, Section 300.440 requirements (CERCLA Offsite Rule) for any off-site disposal of wastes generated from this site.

**5. Projected Schedule**

The response actions described above will be initiated upon approval of this Action Memorandum. Foregoing any unexpected delays, on-site activities are expected to last no more than 12 months.

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

Contamination will continue to pose a threat to the public and the environment through direct contact, incidental ingestion and migration to the surface water.

**VII. OUTSTANDING POLICY ISSUES:**

No outstanding policy issues have been identified at this time.

**VIII. ENFORCEMENT:**

Enforcement activities have been initiated and are ongoing. See Attachment, "Enforcement Sensitive," for more detailed information.

**IX. RECOMMENDATION:**

This decision document represents the selected removal action for the Ward Transformer Site, in Raleigh, North Carolina, developed in accordance with CERCLA as amended, and not inconsistent with the National Contingency Plan (NCP). This decision is based on the administrative record for the Site. Conditions at the Site meet the NCP Section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed action.

(Approval) Winston A. Smith Date: Sept. 14, 2004

(Disapproval) \_\_\_\_\_ Date: \_\_\_\_\_

Winston A. Smith, Director  
Waste Management Division

Attachment

Site: Ward Transformer Site

Note: Due to the CONFIDENTIAL nature of the material, pages 2 9 0012 to 2 9 0013 of this document has been withheld. Withheld material is available, for Judicial review only, in the Records Center at EPA Region IV, Atlanta, Georgia

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JAN 09 2013

**SUPPLEMENTAL ENFORCEMENT ACTION MEMORANDUM**

**SUBJECT:** Change in Removal Activities  
Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina

**FROM:** Hilary Thornton, Remedial Project Manager  
Superfund Remedial and Site Evaluation Branch

**TO:** Franklin E. Hill, Director  
Superfund Division

**I. PURPOSE**

The purpose of this Supplemental Enforcement Action Memorandum is to request approval for a change to the Time-Critical Removal Action (TCRA) currently being conducted at the Ward Transformer Superfund Site (Site) in Raleigh, North Carolina. The TCRA is described in the attached Enforcement Action Memorandum signed by Winston A. Smith, as Director of the U.S. Environmental Protection Agency Region 4's Waste Management Division, on September 14, 2004.

This change to the removal action in Section V of the Enforcement Action Memorandum involves excavating polychlorinated biphenyl (PCB)-contaminated surface stone paving and/or soil exceeding 1 ppm PCBs to limited depths, plugging an existing subsurface water drain pipe so that any PCB-impacted material that may be in the pipe will be contained, and implementing institutional controls on portions of the Site to prevent exposure to PCB-contaminated soil/gravel that remains above 1 ppm PCBs, as more fully described below. This proposed change has been reviewed and approved by the North Carolina Department of Environment and Natural Resources (NCDENR).

Sections II, III, IV, VI, VII and VIII of the September 14, 2004 Enforcement Action Memorandum are unchanged.

The September 14, 2004 Enforcement Action Memorandum memorialized the following removal activities selected for the Site. They included:

- (i) Further delineate and remove soil with concentrations exceeding 1 part per million (ppm) PCB, from all areas NOT effectively controlled by the storm water management/spill control system;
- (ii) Further delineate and remove soil with concentrations exceeding 25 ppm PCB, from all areas effectively controlled by the storm water management/spill control system;
- (iii) Arrange for the ultimate disposal and/or treatment of all excavated soil and debris in a manner satisfactory to the EPA;

- (iv) To the maximum extent practicable, return areas which are disturbed by the removal action to their pre-removal state.

When the Ward Transformer facility ceased operations in 2006, the storm water management/spill control system became inoperable. As a result, the requirement to excavate all soil with PCB contamination exceeding 1 ppm became applicable to the entire Site. However, the PRPs performing the TCRA have been unable to excavate all of the required contaminated soil at-depth from the surface of partially weathered rock or hardrock located between 1 and 29 feet below ground surface (bgs) on certain portions of parcels owned by Ward Transformer Company, Inc., identified as Parcel # 0768731351 and Parcel # 0768723932, Wake County, North Carolina (Ward Transformer Properties); Ward Ventures, LLC, identified as Parcel # 0768525821, Wake County, North Carolina (Ward Ventures Property); and Raleigh Durham International Airport, identified as Parcel # 0767324317, Wake County, North Carolina (RDU Property).

For the adjacent parcel owned by DeNovo Morrisville, LLC (DeNovo), and leased by Estes Express Lines (Estes) for trucking operations, identified as Parcel # 0768720670, Wake County, North Carolina (DeNovo Property), the full extent of contamination was not known at the time the 2004 Enforcement Action Memorandum was finalized. Further investigation of the DeNovo Property has identified PCB-contaminated surface stone paving and/or soil above 1 ppm in the surface areas and subsurface areas including beneath Estes' dock building as well as portions of the adjoining concrete aprons. Investigations have also identified a subsurface water drain pipe beneath the DeNovo Property with PCB-contaminated soil at both the inlet and outlet ends of the pipe, suggesting PCB contaminated soils remain within the pipe. PCB contaminated soil beneath the dock building is inaccessible unless the building is demolished and removed. The docking building is in continuous use for Estes' trucking operations so demolishing the building in order to excavate contaminated soils underneath would completely disrupt Estes' ongoing business and possibly require construction of a replacement building. Excavating surface stone paving and/or soil in certain areas outside of Estes' dock building to depths below six (6) inches bgs could impact the structural integrity of the building. Further, excavating surface stone paving and/or soil in certain areas outside of Estes' dock and maintenance buildings to depths below two (2) feet bgs could significantly burden Estes' ongoing business. Excavations greater than two (2) feet bgs are not necessary in order to protect current or future workers from direct exposure to PCB-contaminated soil/gravel and mitigate migration of PCBs through storm water runoff.

As a result of the aforementioned circumstances, the EPA hereby changes Section V(A)(1)(b) of the September 14, 2004 Enforcement Action Memo as follows:

## **V. PROPOSED ACTION**

### **A. Proposed Actions:**

#### **1. Proposed Action Description:**

##### **b) Contamination Removal**

- (v) Excavation of contaminated surface stone paving and/or soil exceeding 1ppm PCBs to a depth of two (2) feet bgs in certain areas outside of Estes' dock and maintenance buildings, or a depth of six (6) inches bgs within one (1) foot of certain areas outside of the Estes' dock building, and then backfilling these areas with clean soil, stone, and/or concrete paving to approximately the existing ground surface. Planned excavations along



portions of the south side of the DeNovo Property may be deeper than two (2) feet to provide for access to deeper impacted soil along the slope on the RDU Property. Excavations are also deeper at the two ends of the existing subsurface water drain pipe so it can be partially removed and plugged with concrete as described below.

- (vi) The existing subsurface water drain pipe will be partially removed and plugged with concrete to minimize the potential for migration of PCB contamination through the remaining pipe. The existing pipe will be replaced by a new surface water drain pipe. Any PCBs encountered exceeding 1ppm in the new pipe location will be removed before pipe excavation begins.
- (vii) In order to prevent exposure to the PCB-contaminated soils that remain on the DeNovo Property, Ward Transformer Properties, Ward Ventures Property, and RDU Property, institutional controls in the form of restrictive covenants will be recorded at the Wake County Register of Deeds Office with specified land use restrictions to prevent exposure to contaminated soil above 1 ppm PCBs in the following areas:
  - (a) contaminated soils underneath the Estes dock building on the DeNovo Property, as generally depicted in Attachment A;
  - (b) contaminated soils within one (1) foot of the Estes dock and maintenance buildings on the DeNovo Property that are within the "Restricted Excavation Areas" generally depicted in Attachment B, excluding those parts of the Estes' dock building within the "Restricted Excavation Areas" that are adjacent to the concrete apron slabs, at depths below six (6) inches;
  - (c) contaminated soils within all other "Restricted Excavation Areas" outside of the Estes' dock and maintenance buildings on the DeNovo Property, as generally depicted in Attachment B, at depths below two (2) feet; and
  - (d) contaminated soils at-depth remaining on the surface of partially weathered rock or hardrock on the Ward Transformer Properties, Ward Ventures Property, and RDU Property, as generally depicted in Attachment C, and any other areas of the Site where complete removal is technically impracticable.

The maps presented in Attachments A, B, and C are approximations of the areas where use will be restricted and are subject to change based on new or more complete information. Implementation of the modified removal action will address the threats identified in Section III of the September 14, 2004 Enforcement Action Memorandum, including threats from direct contact with PCB-contaminated soil/gravel and threats associated with the migration of PCB-contaminated soil via surface water runoff.

#### **4. Compliance with Applicable and Relevant and Appropriate Requirements**

In accordance with the NCP at 40 C.F.R. § 300.415(j), on-site removal actions conducted under the CERCLA are required to attain applicable or relevant and appropriate requirements (ARARs) to the extent practicable considering the exigencies of the situation or provide grounds for invoking a CERCLA waiver under Section 121(d)(4). In determining whether compliance with ARARs is practicable, the lead agency may consider appropriate factors, including (1) the urgency of the situation; and (2) scope of the removal action to be conducted. Additionally, under 40 C.F.R. 300.405(g)(3), other

advisories, criteria, or guidance may also be considered (so-called To-Be-Considered or TBC) when conducting the removal action.

The site-specific ARARs and TBC for this time-critical removal action, which the EPA deems compliance is practicable, are listed in Tables 1 and 2.

Any remediation wastes that are transferred off-site or transported in commerce along public right-of-ways will meet the Hazard Materials Regulations requirements at 49 C.F.R. Part 171-180. In the event the remediation wastes are hazardous and/or PCB wastes, then applicable transportation requirements specified in RCRA and/or TSCA regulations will be met. These include packaging, labeling, marking, manifesting, and placarding etc., requirements for hazardous materials. In addition, as provided in CERCLA Section 121(d)(3) and the Off-site Rule at 40 C.F.R. 300.440 *et seq.*, the off-site transfer of any hazardous substance, pollutant, or contaminant generated during the response action will be sent to a treatment, storage, or disposal facility that is in compliance with applicable federal and state laws and has been approved by the EPA for acceptance of CERCLA waste.


#### 5. Projected Schedule

The proposed removal activities are expected to be completed no more than 12 months from the date this Supplemental Enforcement Action Memorandum is signed.

### IX. RECOMMENDATION

This decision document sets forth the proposed change to the TCRA at the Ward Transformer Superfund Site in Raleigh, Wake County, North Carolina. It has been developed in accordance with CERCLA, as amended, and is not inconsistent with the National Contingency Plan (NCP). The selection of the changes to the response action is based on documents contained in the Administrative Record for the TCRA. Conditions at the Site continue to meet the NCP Section 300.415(b)(2) criteria required for a removal.

I recommend your approval of the proposed change described in Section V of this Supplemental Enforcement Action Memorandum.

(Approval)  Date: 1/9/13

(Disapproval) \_\_\_\_\_ Date: \_\_\_\_\_

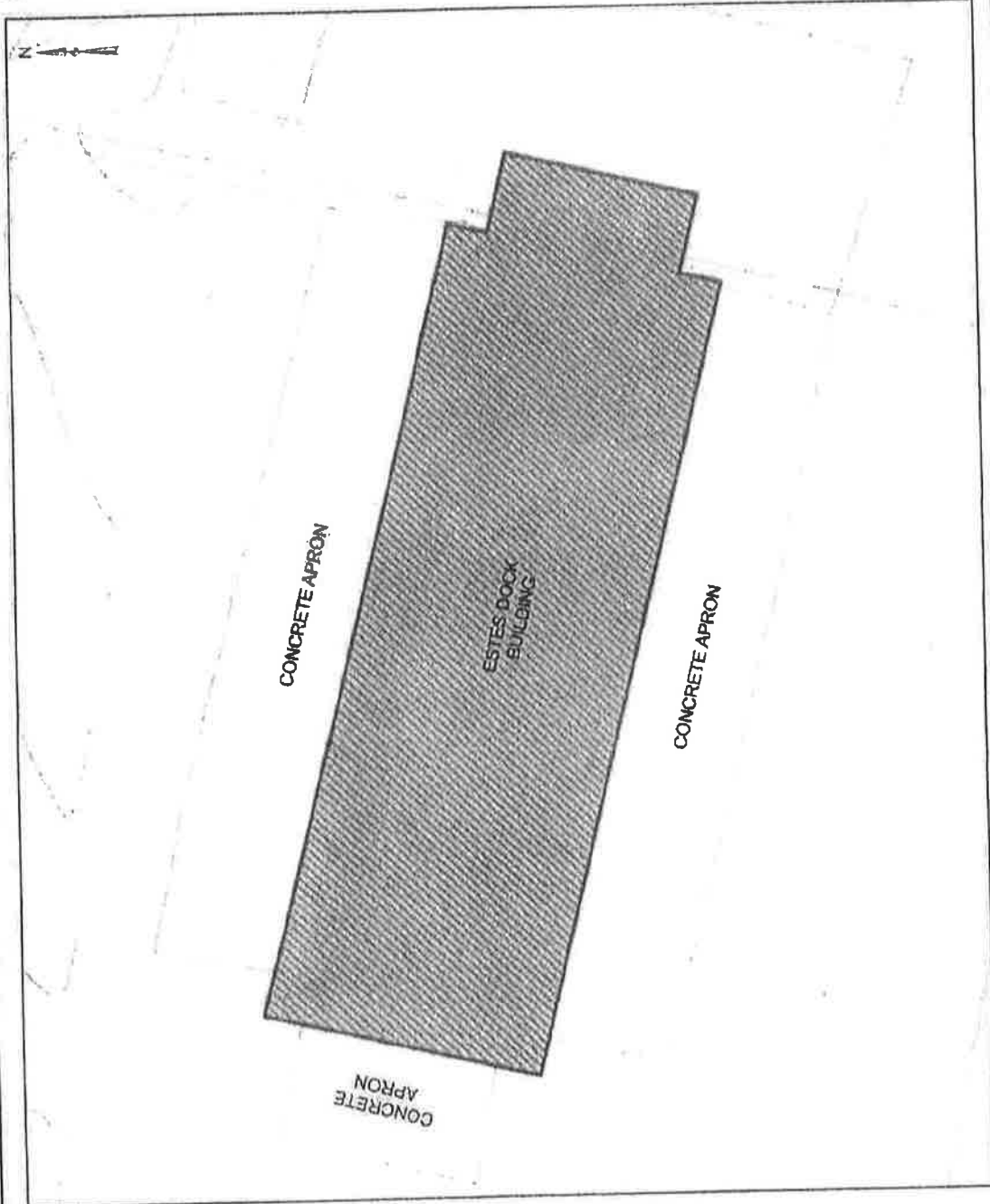
Franklin E. Hill, Director  
Superfund Division

## Attachment A

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**

LEGEND

- Property Boundary
- ▨ Restricted Excavation Area



NOTES

Date: 11/14/2011

REFERENCE

North Carolina, 1984, 2005  
 North Carolina, 1984, 2005  
 Planning Department, Inc., 2005  
 Planning, North Carolina, 1984, 2005



PROJECT

Wind Transformer Superfund Site  
 Raleigh, North Carolina

FILE

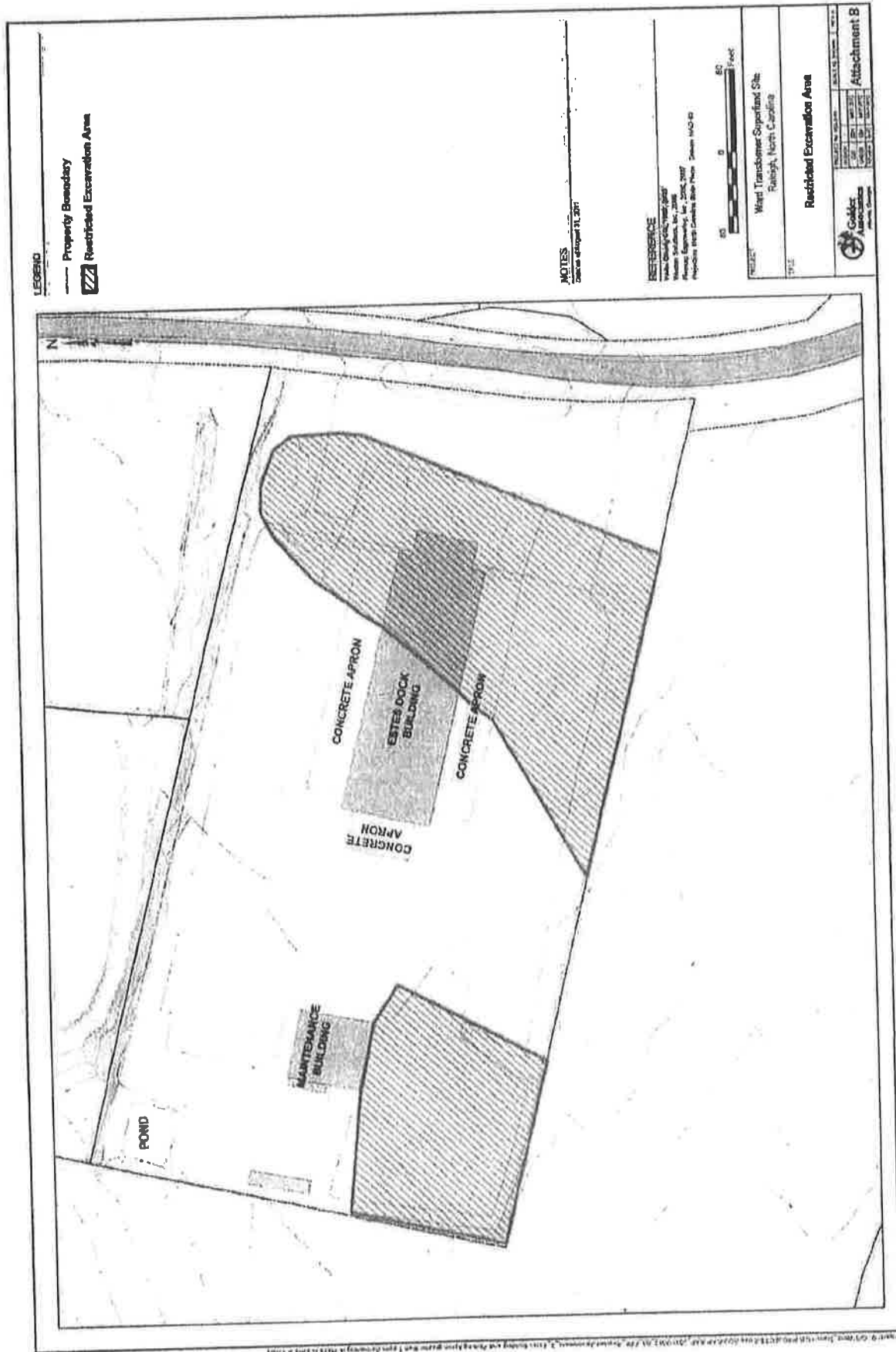
Restricted Excavation Area



Attachment A

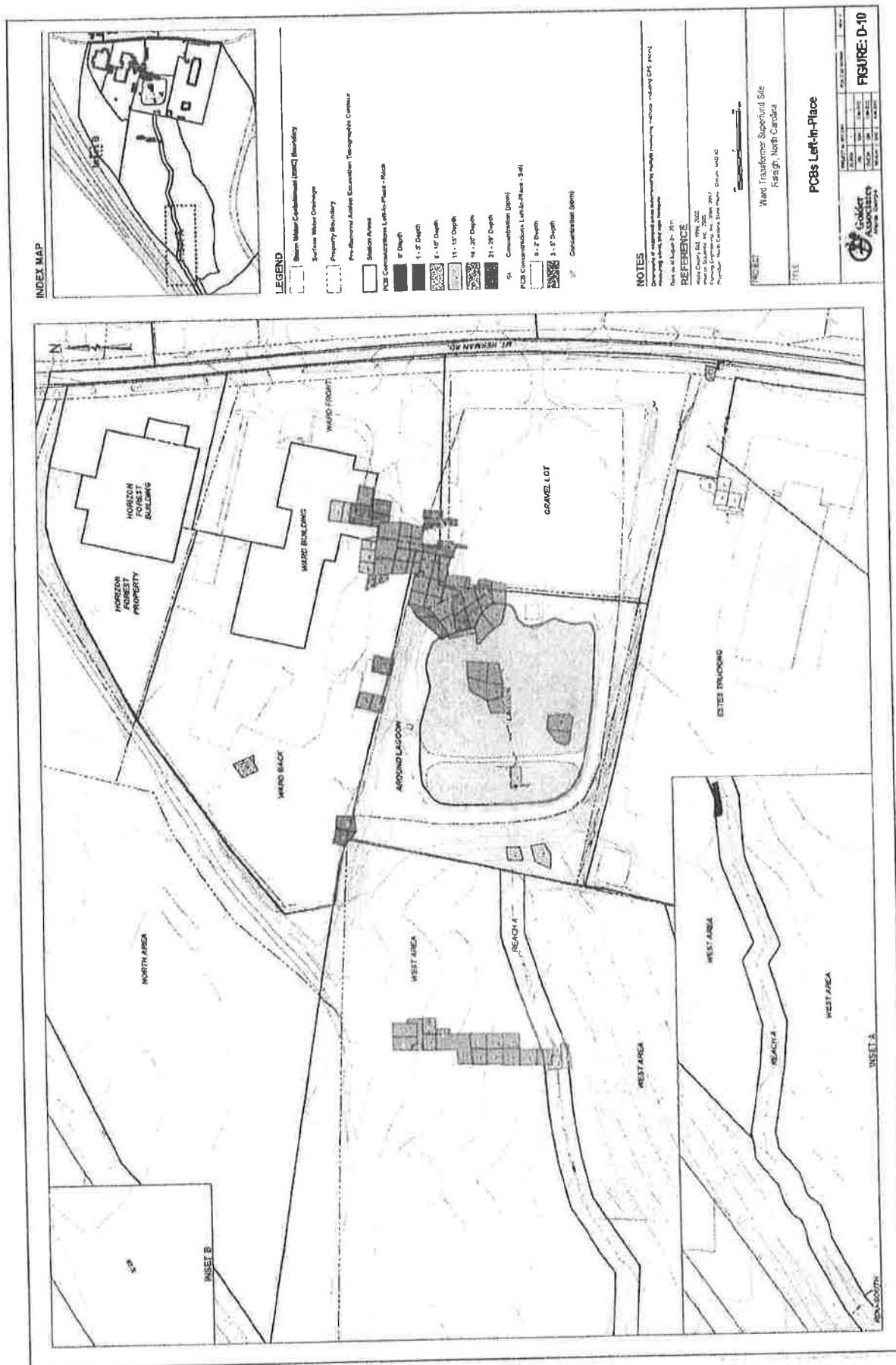
## Attachment B

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



## Attachment C

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**





**Table 1 - List of Action-Specific ARARs/TBC  
For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
<b>General Construction Standards — All Land-disturbing Activities (i.e., excavation, clearing, grading, etc.)</b>			
Managing storm water runoff from land-disturbing activities	Shall install erosion and sedimentation control devices and practices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction.	Land-disturbing activity (as defined in N.C.G.S. Ch. 113A-53) of more than 1 acre of land — <b>applicable</b>	N.C.G.S. Ch. 113A-157(3)
	Shall plant or otherwise provide permanent ground cover sufficient to restrain erosion after completion of construction.		N.C.G.S. Ch. 113A-157(3)
	Shall take all reasonable measures to protect all public and private property from damage caused by such activities.	Land-disturbing activity (as defined in N.C.G.S. Ch. 113A-52) of more than 1 acre of land — <b>applicable</b>	15A NCAC 4B.0105
	<p>Erosion and sedimentation control plan must address the following basic control objectives:</p> <ol style="list-style-type: none"> <li>(1) Identify areas subject to severe erosion, and off-site areas especially vulnerable to damage from erosion and sedimentation.</li> <li>(2) Limit the size of the area exposed at any one time.</li> <li>(3) Limit exposure to the shortest feasible time.</li> <li>(4) Control surface water run-off originating upgrade of exposed areas</li> <li>(5) Plan and conduct land-disturbing activity so as to prevent off-site sedimentation damage.</li> </ol> <p>Include measures to control velocity of storm water runoff to the point of discharge.</p>		15A NCAC 4B.0106
	Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the run-off of 10 year storm.	Land-disturbing activity (as defined in N.C.G.S. Ch. 113A-52) of more than 1 acre of land — <b>applicable</b>	15A NCAC 4B.0108

**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
	Shall conduct activity so that the post-construction velocity of the ten year storm run-off in the receiving watercourse to the discharge point does not exceed the parameters provided in this Rule.		15A NCAC 4B.0109
	Shall install and maintain all temporary and permanent erosion and sedimentation control measures.		15A NCAC 4B.0113
Managing fugitive dust emissions	Shall not cause or allow fugitive dust emissions to cause or contribute to substantive complaints, or visible emissions in excess of that allowed under paragraph (c) of this Rule.  Implement methods (e.g. wetting dry soils) to control dust emissions that could travel beyond the facility boundary.	Activities within facility boundary that will generate fugitive dust emissions — relevant and appropriate	15A NCAC 02D .0540(c)
			15A NCAC 02D .0540(g)
<b>Waste Generation and Management — (excavated soils, gravel, sediments and demolition debris)</b>			
Management of PCB waste (e.g., contaminated PPE, equipment, waste water)	Any person storing or disposing of PCB waste must do so in accordance with 40 CFR 761, Subpart D.  Any person cleaning up and disposing of PCBs shall do so based on the concentration at which the PCBs are found.	Generation of waste containing PCBs at concentrations $\geq$ 50 ppm — applicable  Generation of PCB remediation waste as defined in 40 CFR 761.3 — applicable	40 CFR 761.50(a)  40 CFR 761.61
Management of PCB Items	Must dispose of as bulk product waste in accordance with 40 CFR 761.62(a) or (c).	Removal from use of a PCB Item where PCB Article is no longer intact and non-leaking — applicable	40 CFR 761.50(b)(2)

**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
	<i>Storage – (excavated soils, gravel, sediments and demolition debris)</i>		
Temporary storage of PCB waste (e.g., PPE, rags) in a container(s)	Container(s) shall be marked as illustrated in 40 CFR 761.45(a).	Storage of PCBs and PCB Items at concentrations $\geq$ 50 ppm for disposal – applicable	40 CFR 761.40(a)(1)
	Storage area must be properly marked as required by 40 CFR 761.40(a)(10).		40 CFR 761.65(c)(3)
	Any leaking PCB Items and their contents shall be transferred immediately to a properly marked non-leaking container(s).		40 CFR 761.65(c)(5)
	Container(s) shall be in accordance with requirements set forth in DOT HMR at 49 CFR 171-180.		40 CFR 761.65(c)(6)
Temporary storage of bulk PCB remediation waste or PCB bulk product waste in a waste pile	Waste must be placed in a pile that: <ul style="list-style-type: none"> <li>is designed and operated to control dispersal by wind;</li> <li>where necessary, by means other than wetting;</li> <li>does not generate leachate through decomposition or other reactions.</li> </ul>	Storage of PCB remediation waste or PCB bulk product waste at cleanup site or site of generation for up to 180 days – applicable	40 CFR 761.65(c)(9)(i) and (ii)
Waste pile liner performance	The storage site must have a liner designed, constructed, and installed to prevent any migration of wastes off or through liner into adjacent subsurface soil, groundwater or surface water at any time during active life (including closure period) of the storage site.		40 CFR 761.65(c)(9)(iii)(A)

**Table 1 - List of Action-Specific ARARs/TBC  
For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
Construction of storage pile liner	<p>Liner must be:</p> <ul style="list-style-type: none"> <li>constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure because of pressure gradients, physical contact with waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;</li> <li>placed on foundation or base capable of providing support to liner and resistance to pressure gradients above and below the liner to prevent failure because of settlement compression or uplift;</li> <li>installed to cover all surrounding earth likely to be in contact with waste.</li> </ul>		40 CFR 761.65(c)(9)(iii)(A)(1)-(3)
Construction of storage pile cover	<p>The storage site must have a cover that:</p> <ul style="list-style-type: none"> <li>meets the requirements of 40 CFR 761.65(c)(9)(iii)(A);</li> <li>is installed to cover all of the stored waste likely to be contacted by precipitation; and</li> <li>is secured so as not to be functionally disabled by winds expected under normal weather conditions; and</li> </ul>		40 CFR 761.65(c)(9)(iii)(B)
Construction of storage pile run-on control system	<p>The storage site must have a run-on control system designed, constructed, operated and maintained such that it:</p> <ul style="list-style-type: none"> <li>prevents flow on the stored waste during peak discharge from at least a 25-year storm;</li> <li>collects and controls at least the water volume resulting from a 24-hour, 25-year storm.</li> </ul> <p>Collection and holding facilities (e.g., tanks or basins) must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.</p>		40 CFR 761.65(c)(9)(iii)(C)(1) and (2)
Modification of waste pile requirements	<p>Requirements of 40 CFR 761.65(c)(9) may be modified under the risk-based disposal option of 40 CFR 761.61(c).</p>		40 CFR 761.65(c)(9)(iv)

**Table 1 - List of Action-Specific ARARs/TBC  
For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
Storage of solid waste	All solid waste shall be stored in such a manner as to prevent the creation of a nuisance, insanitary conditions, or a potential public health hazard.	Generation of solid waste which is determined <i>not</i> to be hazardous — relevant and appropriate	15A NCAC 13B .0104(f)
	Containers for the storage of solid waste shall be maintained in such a manner as to prevent the creation of a nuisance or insanitary conditions. Containers that are broken or that otherwise fail to meet this Rule shall be replaced with acceptable containers.		15A NCAC 13B .0104(e)
	<i>Waste Treatment and Disposal — (excavated soils, gravel, sediments and demolition debris)</i>		
Disposal of solid waste	Shall ensure that waste is disposed of at a site or facility which is permitted to receive the waste.	Generation of solid waste intended for off-site disposal — relevant and appropriate	15A NCAC 13B .0106(b)
Disposal of decontamination waste and residues	Such waste shall be disposed of at their existing PCB concentration unless otherwise specified in 40 CFR 761.79(g)(1 - 6).	Decontamination waste and residues — applicable	40 CFR 761.79(g)
	Are regulated for disposal as PCB remediation waste.	Distillation bottoms or residues and filter media — applicable	40 CFR 761.79(g)(1)
	Are regulated for disposal at their original concentration.	PCBs physically separated from regulated waste during decontamination, other than distillation bottoms and filter media — applicable	40 CFR 761.79(g)(2)
Disposal of decontamination waste and residues <i>con't</i>	Must be burned and marketed in accordance with used oil requirements in 40 CFR 761.20(e), or disposed of in accordance with 40 CFR 761.60(a) or (e), or decontaminated pursuant to the section.	Hydrocarbon solvent used or reused for decontamination that contains < 50 ppm PCBs — applicable	40 CFR 761.79(g)(3)
	Shall be disposed of in an incinerator operating in compliance with 40 CFR 761.70, or decontaminated pursuant to this section.	Chlorinated solvent at any concentration PCBs used for decontamination — applicable	40 CFR 761.79(g)(4)

**Table 1 - List of Action-Specific ARARs/TBC  
For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
	Shall be disposed of in accordance with provisions for wastes from cleanup of PCB remediation waste at 40 CFR 761.61(a)(5)(v).	Non-liquid cleaning materials and PPE at any concentration PCBs, including non-porous surfaces and other non-liquid materials (e.g., rags, gloves, booties) resulting from decontamination - <b>applicable</b>	40 CFR 761.79(g)(6)
Disposal of PCB contaminated porous surfaces (self-implementing option)	Shall be disposed on-site or off-site as bulk PCB remediation waste according to 40 CFR 761.61(a)(5)(i) or decontaminated for use according to 40 CFR 761.79(b)(4).	PCB remediation waste <i>porous surfaces</i> (as defined in 40 CFR 761.3) - <b>applicable</b>	40 CFR 761.61(a)(5)(iii)
Disposal of PCB contaminated non-porous surfaces off-site (self-implementing option)	Shall be disposed of in accordance with 40 CFR 761.61(a)(5)(i)(B)(3)(ii) [sic] 40 CFR 761.61 (a)(5)(i)(B)(2)(ii). Metal surfaces may be thermally decontaminated in accordance with 40 CFR 761.79(c)(6)(i).	PCB remediation waste <i>non-porous surfaces</i> (as defined in 40 CFR 761.3) having surface concentrations < 100 µg/cm <sup>2</sup> - <b>relevant and appropriate</b>	40 CFR 761.61 (a)(5)(ii)(B)(1)
	Shall be disposed of in accordance with 40 CFR 761.61(a)(5)(i)(B)(3)(iii)[sic] 40 CFR 761.61(a)(5)(i)(B)(2)(iii). Metal surfaces may be thermally decontaminated in accordance with 40 CFR 761.79(c)(6)(ii).	PCB remediation waste <i>non-porous surfaces</i> having surface concentrations ≥ 100 µg/cm <sup>2</sup> - <b>relevant and appropriate</b>	40 CFR 761.61(a)(5)(ii)(B)(2)
Disposal of PCB bulk product waste (e.g., building demolition debris) in solid waste landfill	May dispose of in a facility permitted, licensed, or registered by a State as a municipal solid waste or non-municipal non-hazardous waste landfill.	PCB bulk product waste listed in 40 CFR 761.62(b)(1)(i) including non-liquid building debris - <b>applicable</b>	40 CFR 761.62(b)(1)
	May dispose of in a facility permitted, licensed, or registered by a State as a municipal solid waste or non-municipal non-hazardous waste landfill.	PCB bulk product waste not listed in 40 CFR 761.62(b)(1)(i) that is sampled in accordance with the protocols set out in subpart R of part 761 and leaches PCBs at < 10 µg/L of water measured using a procedure used to simulate leachate generation - <b>applicable</b>	40 CFR 761.62(b)(1)(ii)

**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
	<p>May dispose of in a facility permitted, licensed, or registered by a State to manage as a municipal solid waste subject to 40 CFR 258 or non-municipal non-hazardous waste subject to 40 CFR 257.5 thru 257.30 if:</p> <ul style="list-style-type: none"> <li>the PCB bulk product waste is segregated from organic liquids disposed of in the landfill, and</li> <li>leachate is collected from the landfill and monitored for PCBs.</li> </ul>	<p>Other PCB bulk product waste not meeting conditions of 40 CFR 761.62(b)(1) (e.g., paper/felt gaskets contaminated by liquid PCBs) – applicable</p>	<p>40 CFR 761.62(b)(2)</p> <p>40 CFR 761.62(b)(2)(i) and (ii)</p>
<p>Disposal of bulk PCB remediation waste (e.g., soils, gravel, sediments) off-site (self-implementing option)</p>	<p>May be sent off-site for decontamination or disposal provided the waste is either dewatered on-site or transported off-site in containers meeting the requirements of DOT HMR at 49 CFR parts 171-180.</p>	<p>Generation of bulk PCB remediation waste (as defined in 40 CFR 761.3) for disposal – relevant and appropriate</p>	<p>40 CFR 761.61(a)(5)(B)</p>
	<p>Must provide written notice including the quantity to be shipped and highest concentration of PCBs (using extraction EPA Method 3500B/3540C or Method 3500B/3550B followed by chemical analysis using Method 8082 in SW-846 or methods validated under 40 CFR 761.320-26 (Subpart Q)) at least 15 days before the first shipment of waste to each off-site facility</p>	<p>Generation of bulk PCB remediation waste (as defined in 40 CFR 761.3) for disposal at an off-site facility where the waste is destined for an area not subject to a TSCA PCB Disposal Approval – relevant and appropriate</p>	<p>40 CFR 761.61(a)(5)(B)(2)(iv)</p>
	<p>Shall be disposed of in accordance with the provisions for Cleanup wastes at 40 CFR 761.61(a)(5)(v)(A).</p>	<p>Bulk PCB remediation waste which has been de-watered and with a PCB concentration &lt; 50 ppm – relevant and appropriate</p>	<p>40 CFR 761.61(a)(5)(B)(2)(ii)</p>
	<p>Shall be disposed of:</p> <ul style="list-style-type: none"> <li>in a hazardous waste landfill permitted by EPA under §3004 of RCRA;</li> <li>in a hazardous waste landfill permitted by a State authorized under §3006 of RCRA; or</li> <li>in a PCB disposal facility approved under 40 CFR 761.60.</li> </ul>	<p>Bulk PCB remediation waste which has been de-watered and with a PCB concentration ≥ 50 ppm – relevant and appropriate</p>	<p>40 CFR 761.61(a)(5)(B)(2)(iii)</p>

**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
Performance-based disposal of PCB remediation waste	Shall dispose by one of the following methods: <ul style="list-style-type: none"> <li>• in a high-temperature incinerator approved under 40 CFR 761.70(b);</li> <li>• by an alternate disposal method approved under 40 CFR 761.60(c);</li> <li>• in a chemical waste landfill approved under 40 CFR 761.73;</li> <li>• in a facility with a coordinated approval issued under 40 CFR 761.77; or</li> <li>• through decontamination in accordance with 40 CFR 761.79.</li> </ul>	Disposal of non-liquid PCB remediation waste (as defined in 40 CFR 761.3) – applicable	40 CFR 761.61(b)(2) 40 CFR 761.61(b)(2)(i)
	Shall be disposed according to 40 CFR 761.60(a) or (c), or decontaminate in accordance with 40 CFR 761.79.	Disposal of liquid PCB remediation waste – applicable	40 CFR 761.61(b)(1)
Disposal of PCB cleaning solvents, abrasives, and equipment (self-implementing option)	May be reused after decontamination in accordance with 40 CFR 761.79; or For liquids, disposed in accordance with 40 CFR 761.60(a).	Generation of PCB wastes from the cleanup of PCB remediation waste – relevant and appropriate	40 CFR 761.61(a)(5)(v)(B) 40 CFR 761.60(b)(1)(i)(B)
Disposal of PCB liquids (e.g., transformer fluid)	Must be disposed of in an incinerator which complies with 40 CFR 761.70, except:	PCB liquids at concentrations ≥ 50 ppm – applicable	40 CFR 761.60(a)
Disposal of PCB contaminated precipitation, condensation, leachate, or load separation	May be disposed in a chemical waste landfill which complies with 40 CFR 761.75 if: <ul style="list-style-type: none"> <li>• disposal does not violate 40 CFR 268.32(a) or 268.42(a)(1);</li> <li>• liquids do not exceed 500 ppm PCB and are not an ignitable waste as described in 40 CFR 761.75(b)(8)(iii).</li> </ul>	PCB liquids at concentrations ≥ 50 ppm and < 500 ppm from incidental sources and associated with PCB Articles or non-liquid PCB wastes – applicable	40 CFR 761.60(a)(3) 40 CFR 761.60(a)(3)(i) and (ii)



**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
Performance-based disposal of PCB bulk product waste	<p>May dispose of by one of the following:</p> <ul style="list-style-type: none"> <li>• in an incinerator approved under 40 CFR 761.70;</li> <li>• in a chemical waste landfill approved under 40 CFR 761.75;</li> <li>• in a hazardous waste landfill permitted by EPA under §3004 of RCRA or by authorized state under §3006 of RCRA;</li> <li>• under alternate disposal approved under 40 CFR 761.60(e);</li> <li>• in accordance with decontamination provisions of 40 CFR 761.79; or</li> <li>• in accordance with thermal decontamination provisions of 40 CFR 761.79(c)(6) for metal surfaces in contact with PCBs.</li> </ul>	Disposal of PCB bulk product waste as defined in 40 CFR 761.3 – applicable	40 CFR 761.62(a) 40 CFR 761.62(a)(1)-(6)
<i>Decontamination and Cleanup Levels</i>			
Decontamination of PCB contaminated water	For discharge to a treatment works as defined in 40 CFR 503.9 (aa), or discharge to navigable waters, meet standard of < 3 ppb PCBs; or	Water containing PCBs regulated for disposal – applicable	40 CFR 761.79(b)(1)(ii)
	For unrestricted use, meet standard of ≤ 0.5 ppb PCBs.		40 CFR 761.79(b)(1)(iii)
Decontamination of PCB contaminated liquids	Meet standard of < 2 ppm PCBs.	Organic liquids and non-aqueous inorganic liquids containing PCBs – applicable	40 CFR 761.79(b)(2)
Decontamination of movable equipment contaminated by PCBs (self-implementing option)	<p>May decontaminate by:</p> <ul style="list-style-type: none"> <li>• swabbing surfaces that have contacted PCBs with a solvent;</li> <li>• a double wash/rinse as defined in 40 CFR 761.360-378; or</li> <li>• another applicable decontamination procedure under 40 CFR 761.79.</li> </ul>	Movable equipment contaminated by PCBs and used in storage areas, tools and sampling equipment – relevant and appropriate	40 CFR 761.79(c)(2)
Cleanup verification (self-implementing options)	Must collect and analyze the wastes in accordance with 40 CFR 761.280-298 (Subpart O).	Collection and analysis of samples to verify cleanup and on-site disposal of bulk PCB remediation wastes and porous surfaces – relevant and appropriate	40 CFR 761.61(a)(6)(i)

**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Action	Requirements	Prerequisite	Citation
	Must collect and analyze the waste in accordance with 40 CFR 761.269.	Collection and analysis of samples from liquid PCB remediation waste – relevant and appropriate	
	May use PCB field screening tests to determine when to sample to verify that cleanup is complete.	Interim sampling during PCB remediation waste cleanup – relevant and appropriate	
Cleanup of bulk PCB remediation waste on-site (self-implementing option)	May do so subject to all of the following: <ul style="list-style-type: none"> <li>• a non-chlorinated solvent is used;</li> <li>• the process occurs at ambient temperature;</li> <li>• the process is not exothermic;</li> <li>• the process uses no external heat;</li> <li>• the process has secondary contaminant to prevent any solvent from being released to the underlying or surrounding soils or surface waters; and</li> <li>• solvent disposal, recovery, and/or reuse is in accordance with relevant provisions of 40 CFR 761.61(b)(1) or 761.61(c) or applicable paragraphs of 40 CFR 761.79</li> </ul>	Cleanup of PCB remediation waste on-site or using a soil washing process – relevant and appropriate	40 CFR 761.61(a)(5)(i)(A) 40 CFR 761.61(a)(5)(i)(A)(1)-(6)
<b>Transportation of Wastes</b>			
Transportation of PCB wastes off-site	Must comply with the manifesting provisions at 40 CFR 761.207 through 218.	Relinquishment of control over PCB wastes by transporting, or offering for transport – applicable	40 CFR 761.207(a)
Transportation of hazardous materials	Shall be subject to and must comply with all applicable provisions of the HMTA and DOT HMR at 49 CFR 171-180.	Any person who, under contract with an department or agency of the federal government, transports "in commerce," or causes to be transported or shipped, a hazardous material – applicable	49 CFR 171.1(c)

ARAR = applicable or relevant and appropriate requirement  
CFR = Code of Federal Regulations

**Table 1 - List of Action-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

DOT = U.S. Department of Transportation  
 > = greater than  
 < = less than  
 ≥ = greater than or equal to  
 ≤ = less than or equal to  
 HMR = Hazardous Materials Regulations  
 HMTA = Hazardous Materials Transportation Act  
 NCAC = *North Carolina Administrative Code*  
 N.C.G.S. = *North Carolina General Statutes*  
 PCB = polychlorinated biphenyl  
 PPE = personal protective equipment  
 RCRA = Resource Conservation and Recovery Act of 1976  
 TSCA = Toxic Substances Control Act of 1976

**Table 2 - List of Location-Specific ARARs/TBC**  
**For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Location	Requirements	Location-Specific ARARs	Prerequisite	Citation
Presence of wetlands	Requires Federal agencies to evaluate action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance beneficial values of wetlands.		Actions that involve potential impacts to, or take place within, wetlands – TBC	Executive Order 11990 – <i>Protection of Wetlands</i> Section 1.(a)
	Must comply with the most current versions of the Clean Water Act Section 404(f) regulations and the Sedimentation Pollution Control Act, N.C.G.S. 113A, Article 4		Activities within, wetlands as defined by N.C.G.S. 143-212(6) – <b>applicable</b>	15A NCAC 02B.0230
Presence of wetlands or other waters influenced by wetlands	Concentrations or combination of substances which are toxic or harmful to human, animal, or plant life may not be present in amounts which individually or cumulatively may cause adverse impacts on existing wetland uses.		Activities within, wetlands as defined by N.C.G.S. 143-212(6) – <b>applicable</b>	15A NCAC 02B.0231(b)(4)
	Standards provided in 15A NCAC 02B.0231(b)(1), (2), (3), (5), and (6) shall be used to assure the maintenance or enhancement of the existing uses of wetlands identified in 15A NCAC 02B.0231(a)			15A NCAC 02B.0231(b)
Presence of floodplain designated as such on a map	Shall consider alternatives to avoid, to the extent possible adverse effects and incompatible development in the floodplain.		Federal actions that involve potential impacts to, or take place within, floodplains – TBC	Executive Order 11988 – <i>Floodplain Management</i> Section 2(a)(2)
Location encompassing aquatic ecosystem as defined in 40 CFR 230.3(c)	No discharge of dredged or fill material into an aquatic ecosystem is permitted if there is a practicable alternative that would have less adverse impact.		Action that involves the discharge of dredged or fill material into waters of the United States, including jurisdictional wetlands – <b>applicable</b>	Clean Water Act Regulations – Section 404(b) Guidelines 40 Part 230.10(a)
	No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps in accordance with 40 CFR 230.70 et seq. have been taken that will minimize potential adverse impacts of the discharge on the aquatic ecosystem			Clean Water Act Regulations – Section 404(b) Guidelines 40 CFR 230.10(d)

**Table 2 - List of Location-Specific ARARs/TBC  
For Supplemental Action Memorandum at the Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

Location	Requirements	Prerequisite	Citation
	Must comply with the substantive requirements of the NWP 38 General Conditions, as appropriate, any regional or case-specific conditions recommended by the Corps District Engineer, after consultation.	On-site CERCLA action conducted by Federal agency that involves the discharge of dredged or fill material into waters of the United States, including jurisdictional wetlands -- applicable	Nation Wide Permit (38) <u>Cleanup of Hazardous and Toxic Waste</u>  33 CFR 323.3(b)

ARAR = applicable or relevant and appropriate requirement

CFR = *Code of Federal Regulations*

NCAC = *North Carolina Administrative Code*

N.C.G.S. = *North Carolina General Statutes*

TBC = To be considered

## Attachment D

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



October 12, 2012

053-3184B F/N 250

Mr. Hilary Thornton  
United States Environmental Protection Agency  
Region IV  
Atlanta Federal Center  
4WD-SRSEB, 11th Floor  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

**RE: ADDENDUM NO. 2 - WARD TRANSFORMER REMOVAL ACTION PLAN, REVISION 7  
PHASE 2 - ESTES PROPERTY AND RDU PROPERTY  
WARD TRANSFORMER SUPERFUND SITE  
RALEIGH, NORTH CAROLINA**

Dear Mr. Flores:

On behalf of the Ward Transformer Site Trust (Trust), Golder Associates Inc. (Golder) submits this Revision 7 to Addendum No. 2 to the Removal Action Plan (RAP) for the Ward Transformer Superfund Site. This Addendum is for the following:

- The Estes Express Lines (Estes) terminal is on property currently owned by B&B Apartments, LLC (B&B) that is located immediately south of the Ward Transformer property. The plan described herein for the Estes terminal is a focused soil removal that will be performed while Estes remains in business and that is designed to avoid any significant disruption to Estes' operations. Upon completion of the soil removal work certain areas of the Estes property, which are inaccessible due to Estes' ongoing business operations and/or the location of existing structures, will likely have PCB contamination in the soil at concentrations greater than the 1 ppm standard set forth in the 2004 Removal Action Memorandum. As a result, this plan includes implementation of Institutional Controls (ICs) in those areas where PCB concentrations are above 1 ppm, pursuant to the 2012 Supplemental Enforcement Action Memorandum.
- The surface water drainage course is located south of the Estes property on Raleigh-Durham Airport Authority (RDU) property and North Carolina Department of Transportation (NCDOT) rights-of-way along a portion of I-540 and a portion of Lumley Road, which cuts through the RDU property. RDU and NCDOT have granted access to these areas.
- B&B has entered into a Purchase and Sale Agreement with DeNovo Morrisville, LLC, a Delaware limited liability company ("DeNovo") to sell the B&B property to DeNovo. Estes will continue as the tenant at the property, and Estes and DeNovo have entered into an agreement to extend Estes' lease of the property. EPA has agreed to enter into a *de minimus* Settlement Agreement with B&B and Estes, providing them with a covenant not to sue and contribution protection. The Trust is entering into agreements with DeNovo and Estes which will provide for the recording of a Restrictive Covenant in the form attached hereto upon DeNovo taking title to the property, will facilitate DeNovo's purchase of the property, and will provide for reasonable and necessary access for the Trust, its contractors and agents and EPA's representatives and agents in order to conduct the work set forth in this Addendum No. 2 to the RAP.

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Initially, only the northeast corner and the northern edge of the Estes property were identified in the Ward Transformer RAP as being impacted by PCBs from the Ward Transformer Site. Based upon the discovery of PCB contamination in other areas of the Estes property, on the southern portion of the RDU property, and within NCDOT rights-of-way south of Estes, EPA made the determination to include these properties in the Ward Transformer Removal Action in accordance with paragraph 81 of the September 2005 Administrative Settlement Agreement and Order on Consent.

Revision 1 to Addendum No. 2 of the RAP included the surface water drainage channel within the NCDOT right-of-way along Interstate I-540 (Reach A at I-540) and NCDOT provided access to this area. Golder submitted the "Proposed Removal Action Plan for Reach A at I-540," dated May 24, 2010, which was approved by NCDOT and EPA. Except for a short section at the southwest end of Reach A, this removal action work has been completed and the water course has been restored pursuant to the plans reviewed by NCDOT and the Division of Water Quality (DWQ) and the Land Quality Section (LQS) of the North Carolina Department of Environment and Natural Resources (NCDENR). The short section of Reach A that remains to be completed is located just upstream of where Reach A enters the culvert pipe under I-540 as shown on Figure 1. This short section was not completed because it receives surface water flow from the Estes property and the impacted RDU property. Work in this short section of Reach A is included with the RDU South property removal action described herein.

In accordance with the NCDOT access agreement for I-540 and Lumley Road, there will be no excavation of existing roadway embankment fill inside a 2.0 horizontal to 1.0 vertical (2H:1V) line extending downward from the top shoulder of the embankment. This plan does not include removing any roadway, embankment or drainage structures beneath any roadway.

Based on the anticipated removal actions, the work is estimated to take about 12 months after the Trust gives notice to proceed to the RA Contractor. Notice to proceed is dependent on EPA approval of this Revision 7 of Addendum 2 to the RAP and the completion of the closing of the sale of the B&B property to DeNovo, recording the Restrictive Covenant, and completion of the agreements between the Trust and DeNovo and the Trust and Estes, all as described above. The RA sequence is explained below and an estimated bar chart schedule for the RA field work in consecutive months is presented at the end of this letter. A start date will be established as soon as the sale of the B&B property is completed and the Settlement Agreement between EPA, B&B and Estes becomes final.

## **RA SEQUENCE FOR THE ESTES PROPERTY AND RDU PROPERTY**

The flow of surface water is generally from the Ward Transformer property to the Estes property and then to the RDU property. Because the potential for PCB migration is via sediment transport in surface water, the proposed removal action at the Estes property and the RDU property will be from upstream areas to downstream areas. The removal action at the Estes property will generally be completed prior to initiating work at the RDU property. Consequently, the overall schedule of the removal action for both properties revolves around starting and completing work on the Estes property.

Estimated natural, pre-development topography prior to 1964 was developed by Aero-Data from historic air photographs and is shown superimposed on the current topography on Figure 2. The 1964 topography shows there were two natural drainage features channeling surface water flow across the Estes property from the Ward property: 1) an eastern swale extending from the northeast corner of the property to the southern boundary; and 2) a southwest swale beginning in the central rear of the property extending to the southwest corner (southwest swale). These two drainage features were filled with soil to develop the present surface grades of the Estes property. It appears that soil was excavated from the bank along the northern side of the Estes property to fill the original drainage valleys and to form the embankment that continues onto RDU property to level the surface of the Estes property to the present grades. Golder suspects that some of the relocated soil was PCB-impacted due to runoff from Ward Transformer operations. These conditions have been reported to EPA in the findings of PCB delineation investigations on both the Estes property and the RDU property (see below).



There is a subsurface water drain pipe beneath the front of the Estes property and, based on field pipe tracing, Golder believes that its alignment is an approximate straight line between the pipe inlet and outlet, generally following the alignment of the eastern swale. This alignment, also shown on Figure 2, passes beneath the Estes terminal building. PCB impacts have been found at both the inlet and outlet ends of the drain pipe.

## GENERAL RA APPROACH AND CLEANUP CRITERIA

The removal action at the Estes property and at the RDU property will be similar to that which was implemented at the Ward Transformer property and surrounding properties beginning in July 2007. In summary, this approach is:

- To the extent practicable, sediment and soil with PCB concentrations exceeding 1 ppm will be removed as required by the Enforcement Action Memorandum for the Ward Transformer Site subject to the limitations described in this Addendum No. 2, Revision 7.
- Initial individual excavation areas have been identified from the results of the previous PCB sampling and analysis and will be modified for additional delineation sampling performed during the removal action. At this time, additional delineation sampling is proposed in the location of the former southwestern swale on the RDU property (see Figures 5 and 6).
- Excavation verification sampling and analysis will be used to determine whether the floor and walls of an excavation area are clean or if removal will have to progress laterally and/or vertically subject to the limitations described in this Addendum No. 2, Revision 7. This sampling will generally follow the EPA-accepted protocols employed for the Ward Transformer Site.
- Excavation within an identified area will begin at a location(s) where previous sampling has identified PCBs  $\geq 50$  ppm and will progress from said location(s) to areas of lower PCB concentration.
- Excavation will continue vertically and/or horizontally based on verification sample results until one of the following limits has been reached:
  - The allowable NCDOT excavation limits at the short section of Reach A at I-540 and along Lumley Road. In summary, this excavation limit is that there can be no excavation of existing embankment fill inside a 2.0 horizontal to 1.0 vertical (2H:1V) line extending from the top shoulder of the embankment;
  - The excavation limits at the Estes property as described *infra*; and/or
  - When partially weathered rock or hard rock that cannot be ripped using a Caterpillar Model 320 excavator or equivalent has been reached, at which point it will be terminated at equipment refusal.
- Where necessary, temporary structures will be constructed to control surface water flow and erosion. Erosion and sediment control (ES&C) plans will be submitted to NCDENR. Surface water that has potentially contacted PCB-impacted soil in active excavations and is collected for removal (contact water) will be treated prior to discharge.
- Excavated soil with PCBs  $\geq 50$  ppm will be disposed off-site at a TSCA-approved facility, currently expected to be the Heritage Environmental Services, LLC (Heritage) facility, Indianapolis, IN. Excavated soil with PCBs  $\geq 1$  ppm but  $< 50$  ppm will be disposed at a permitted solid waste disposal facility, currently expected to be Waste Industry, Inc.'s Sampson County Landfill, Sampson County, NC or Republic Services' Brunswick County Landfill, Lawrenceville, VA.
- Soil and/or stone backfill to re-grade the properties will be clean material obtained from on-Site areas that are not PCB-impacted and/or clean material obtained from off-Site sources.

- The final surfaces of backfilled areas will be restored with vegetation or stone or concrete paving to control erosion per agreement with Estes and RDU. Also, stream reconstruction and re-planting plans will be submitted to NCDENR for review.

The amount of contact water is expected to be substantially less than collected and treated in Phase 1 and there is a possibility that the contact water may be transported off-Site to a commercial disposal facility. If treated on-Site the discharge will be within the Site and will meet the NCDENR discharge standards set during Phase 1. Information about the contractor's treatment plant and equipment to treat the contact water will be submitted to EPA. This approach will meet the substantial provisions of the state permit regulations that are applicable or relevant and appropriate (ARAR) following EPA's policy for CERCLA on-site response actions.

## ESTES AND RDU DELINEATION RESULTS SUMMARY

The results of previous soil sampling and analyses at the Estes property and the RDU property have been provided to EPA in two letters from Golder with accompanying drawings illustrating the lateral and vertical distribution of the results:

- April 3, 2009, Estes and RDU South Soil Delineation Sampling Results (Phases 1 and 2)
- July 15, 2009, Estes Buildings Soil Delineation Sampling Results (Phase 2a).

## Estes Property Delineation Results Summary

The results of the PCB sampling and analyses at the Estes property are summarized in the following tables from the April 3, 2009 submittal:

**Table 1: Estes Property Laboratory Results**

PCB Concentration	Number of Samples		
Laboratory Results	Upper 2 feet	Below 2 feet	Comments
<b>Total No. of Samples</b>	<b>48</b>	<b>116</b>	<b>157 total samples</b>
< 1 ppm	19	27	
≥ 1 < 10 ppm	12	30	
≥ 10 ppm	3	14	
≥ 1 < 25 ppm	15	38	
≥ 25 ppm	0	6	> 25 ppm are below upper 2 ft and are in the southwest swale
> 25 ≤ 50 ppm	0	3	
> 50 ppm	0	3	

**Table 2: Estes Property Field Screening Results**

PCB Concentration	Number of Samples		
Field Screening Results	Upper 2 feet	Below 2 feet	Comments
<b>Total No. of samples</b>	<b>90</b>	<b>200</b>	<b>246 total samples</b>
< 1 ppm	65	171	
≥ 1 < 50 ppm	20	25	
≥ 50 ppm	5	4	≥ 50 ppm below 2 feet are in the southwest swale

Delineation sampling results in the April 3, 2009 submittal for the Estes property indicate that soils with PCB concentrations  $\geq 50$  ppm are found in the northeast corner of the property, along the southern boundary and at the southwest corner. At the northeast corner, most of these impacted soils were removed as part of the main Ward Transformer Site work, with the exception of an area at and adjacent to the existing drain pipe. The results also indicate that there is a large volume of clean soil ( $< 1$  ppm PCBs) overlying PCB-impacted soil found at deeper levels. The PCB-impacted soil detected along Estes' southern boundary is associated with the fill placed in the two drainage swales and it extends onto RDU property.

Delineation results provided in the July 15, 2009 submittal for the Estes property indicate no PCB-impacted soils detected directly beneath the Estes maintenance building, which is located at the southwest portion of the property. Beneath Estes main dock building, PCBs were detected within the approximately four feet of fill beneath the dock floor slab at  $< 10$  ppm, except for one sample at 11 ppm. Figure 3 shows the PCB results  $> 1$  ppm from samples within the approximately 4 feet of fill beneath the dock building floor slab (shown as depth below the top of the slab). PCBs were also detected deeper below the eastern part of the dock building and below the truck parking apron along the south side of the dock building, as shown on Figure 4. These PCB detections are attributed to fill that was placed in the original drainage swale.

In addition to the two sampling events described above, Golder also sampled the soil along the alignment of the proposed replacement surface water drainage pipe beneath the Estes facility. As described in the report to EPA on August 17, 2011, PCB concentrations were  $< 1$  ppm except for a detection of 1.1 ppm from the surface sample (from zero to one foot deep) from boring DP-1 that was located in Area 105 (see Figure A-1). This result is generally consistent with surrounding delineation results from previous sampling. Prior to the pipe trench excavation, surface soil removal and verification sampling will be performed at Areas E104 and E105, near the northern end of the pipe alignment as shown on Figures A-1 to A-3, to verify that the PCB-impacted soil has been removed. During the pipe trench excavation soil excavated from the trench will be temporarily stockpiled and used as on-Site backfill. No additional stockpiling or excavation verification sampling of the soil from the pipe trench will be conducted.

### **RDU Property Delineation Results Summary**

As described in the April 3, 2009 submittal, PCB impacts on the RDU property are along the embankment with the Estes property, as described above, and in the soil and sediment along the existing drainage feature from the Estes property to I-540. These drainage features are similar to those shown in the 1964 estimated topography (developed by Aero-Data for the Trust in 2008), except for the changes created by construction of Lumley Road in the late 1990s (when I-540 was constructed) and the earlier fill placed to create the southern and southwest edges of the Estes property. In general, the depth of PCB impacts and the PCB concentrations tend to reduce downstream along the drainage pathways. The various drainage pathways on this part of the RDU property converge with the Reach A I-540 channel just east of I-540 and the flow is then carried westward in a pipe beneath I-540.

### **PROPOSED RA AT THE ESTES PROPERTY**

Estes operates 24 hours a day, seven days a week. The building is a cross-dock truck terminal where goods are constantly moved from one side of the building to the other and continuous access to the truck bays on both sides of the building is necessary for Estes' operations. The truck traffic pattern at the property is a one-way loop with trucks entering at the north entrance and leaving at the south entrance. Estes intends to continue its operations at the current location for the foreseeable future. Therefore, as discussed with EPA, the proposed Estes property soil removal action is designed to reduce, to the extent practicable, significant disruptions to Estes' operations while at the same time provide sound engineering controls that will eliminate incidental direct contact with PCB-impacted material, eliminate PCB migration through sediment transport via surface water runoff, and be protective of human health and the environment, and includes implementation of ICs approved by EPA.

The limited removal action for the Estes property is designed to remove PCB-impacted surface stone paving and/or soil to a maximum depth of 2 feet at most locations and then backfill these areas with clean soil, stone, and/or concrete paving to approximately the existing ground surface. Figure 5 shows an estimate of the surface area to be disturbed and the estimated excavation depths. At some areas of the property, the planned removal activities will completely remove PCB-impacted soil at concentrations greater than the 1 ppm cleanup standard while at other areas PCB-impacted soil at this level will remain. Figure 4 shows the PCB results > 1 ppm from samples within the soil that will remain below the planned removal excavation depths (shown as depth below the ground surface). The PCB-impacted soil in approximately 4 feet of fill below the dock building slab, as shown on Figure 3, will also remain in place.

Where necessary to achieve the removal action objectives on adjacent RDU property, planned excavations along portions of the south side of the Estes property may be deeper than 2 feet to provide for access to deeper impacted soil along the slope on RDU property. Excavations are also deeper at the two ends of the existing pipe so it can be partially removed and plugged with concrete to minimize the potential for migration of PCB material through the remaining pipe. Plugging the existing pipe provides an engineering control so that any PCB-impacted material that may be in the pipe would be isolated and not able to migrate with surface water flow.

The existing pipe will be replaced by a new pipe at the approximate location shown on Figure 5. The new pipe location has been specifically investigated for the presence of PCBs (see above) and, at the shallow locations where PCBs have been detected, the impacted soil will be removed before pipe excavation begins. In this way the pipe excavation and installation schedule will not be subject to delays for verification sampling and analysis and for potential excavation expansion to remove PCBs. This will minimize, to the extent practicable, the time that Estes' north and south driveways will be blocked for pipe installation.

Excavation adjacent to the office portion of the Estes building will be done as close to the structures as is practicable. It is anticipated that the surface soil will be removed to a depth of 6 inches at the wall and from this point the excavation will be sloped downward at approximately 1.5H:1V to its final depth. Portions of concrete truck parking apron slabs outside of the loading dock will be removed, as shown on Figure 5. The apron slabs will be removed to the building walls/footings. The apron slabs and underlying stone and soil will be excavated to 2 feet below the top of the apron slabs.

The removal excavations at Estes will be accomplished in small areas with Golder and the removal action contractor coordinating the work with Estes. Figures A-1 through A-15 (presented after Figure 6) show the estimated excavation areas and PCB disposal designations. In general, the excavation and backfill work is estimated to progress north to south as follows:

- At the northeastern corner of the Estes facility to remove PCB-impacted soil along that part of the alignment of the new surface water drain pipe.
- Install the new surface water drain pipe in sections to reduce the amount of time the north and south entrances are blocked. This will require blocking the north and south entrances, one at a time. Clean soil that is removed will be stockpiled on-site for re-use as backfill.
- At the northeastern corner of the Estes facility to remove the northern end of the existing drain pipe, which is a continuation of previous excavation in this area. This will require blocking the north entrance.
- Between the north and south entrances along the front of the Estes building.
- At the south side of the Estes building and the eastern portion of the embankment slope that borders and extends onto the RDU property. This may require blocking the south entrance.
- The area south of the Estes maintenance building and the western portion of the embankment slope that borders and extends onto the RDU property.

When the above-described limited soil removal actions are completed, the remaining PCB-impacted soil and the remaining part of the existing drain pipe will be beneath the existing concrete cover or beneath 2 feet or more of clean soil, stone, and/or concrete, except for the areas immediately adjacent to the office portion of the building. Where stone or concrete paving is not used, the soil surface will be vegetated to reduce the potential for erosion. The areas receiving the stone or concrete surface will be determined in consultation with Estes and DeNovo. At completion, a drawing(s) showing the results for PCBs remaining in place will be provided to EPA and Estes and DeNovo. If necessary, the Restrictive Covenant will be amended to accurately reflect those areas subject to the restrictions.

## PROPOSED RA AT THE RDU PROPERTY

The present delineation of PCB impacts on the RDU property indicates that the PCBs are generally within the drainage features extending from Estes to I-540. Figure 6 shows an estimate of the surface area to be disturbed. The proposed action includes removal of soil and sediment with PCB concentrations  $\geq 1$  ppm. Additional PCB delineation is proposed during the RA in the southwestern swale to better define potential PCB-impacts on RDU property and PCB impacts identified will be addressed as described above in the General RA Approach and Cleanup Criteria. Restrictions on the extent of removal at the confluence of the RDU drainage channel and the Reach A I-540 channel and along Lumley Road, both of which are within the NCDOT ROW, will follow the plan previously agreed to by NCDOT as described above. Removal will not be extended beneath the I-540 or Lumley Road embankments.

The estimated areas of excavation for PCB removal with PCB disposal designation are illustrated on Figures A-1 through A-15 (Estes to Lumley Road) and on Figures B-1 through B-3 (Lumley Road to I-540). These figures show the estimated excavation as depth below existing ground surface. However, since most of these areas are in the bottom and along the side slopes of the drainage features, excavation will be done as depth perpendicular to the existing sloping ground surface (unlike at the Ward Transformer property where the excavation depth was essentially from a near-horizontal ground surface). A set of drawings will be prepared for EPA and the RA contractor to guide the excavations.

In general, removal excavations on the RDU property will proceed from upstream to downstream in the three main reaches of the drainage:

- From Estes south to Lumley Road
- South of Lumley Road to where the drainage crosses beneath Lumley Road again heading westward
- West of the second crossing beneath Lumley Road to I-540

Within each drainage reach, areas where PCBs  $\geq 50$  ppm have been delineated will be excavated first, followed by areas with PCBs  $< 50$  ppm and  $\geq 1$  ppm. As areas are excavated they will be backfilled and/or the channel side slopes re-graded to form the final slopes. Existing check dams and similar flow control features that have to be removed will be replaced. Vegetation will be re-established along the disturbed portions of the drainage features per agreement with RDU and re-planting plans submitted to NCDENR.

## REDUCTION OF FUTURE RISKS

The removal action planned for the Estes property, the RDU property and the NCDOT property will meet the requirements of the Settlement Agreement to the degree practicable given the NCDOT excavation restrictions along I-540 and Lumley Road and given the practical limitations of working at the Estes property. Excavated material with PCBs  $\geq 50$  ppm will be disposed off-site at a TSCA-approved property. Excavated material with PCBs  $\geq 1$  ppm but  $< 50$  ppm will be disposed at a permitted solid waste disposal property. The proposed approach addresses the relevant actions included in EPA's "Four Main Areas Requiring Immediate Attention" (ref. EPA Enforcement Memorandum, p. 2), which in summary are:

■ Risk to Current Employees

- PCBs that would remain in place on the Estes property and those that may remain along I-540 and Lumley Road will be covered with at least 2 feet of soil and/or stone paving, thus eliminating the risk of incidental direct contact. By letters to Estes and B&B, EPA has warned each of potential future risks of worker contact, such as when digging or excavating. DeNovo has been provided with copies of those letters. The ICs provide for continued preservation of this risk protection.

■ Uncontrolled PCB sediment Runoff

- Removal of PCB-impacted sediment and soil from the RDU property, from all of the surface areas of the Estes property, and potentially from all of the Reach A I-540 channel eliminates the risk of PCB-impacted surface runoff.
- The minimum 2-foot thick vegetated soil or stone or concrete paving cover over PCBs remaining in place at the Estes property will provide an engineering control that effectively eliminates the risk of PCB-impacted sediment being transported off-site by surface water runoff. The ICs provide for continued preservation of this risk protection.
- Plugging the pipe beneath the Estes property will essentially eliminate the potential for PCB-impacted material that may remain in the pipe from being transported in surface water runoff. The replacement pipe will be placed in clean soil so there will be no PCB-impacted runoff.

Should there be any questions regarding this Revision 7 to Addendum No. 2 to the Ward Transformer Superfund Site RAP, please contact the undersigned or the Trust's Project Coordinator, Mr. William G. Weir of CONSOL Energy Inc., at (724) 485-4604.

Sincerely,

**GOLDER ASSOCIATES INC.**



Geraldine S. Monroy, P.E.  
Associate

cc: Mr. William G. Weir, Consol Energy Inc. (by email)  
Mr. Henry Lyon, Progress Energy Carolinas, Inc. (by email)  
Mr. Daniel M. Darragh, Cohen & Grigsby, PC (by email)  
Mr. Michael Brom, PCS Administration (USA), Inc. (by email)

Attachments: Attachment 1 Schedule  
Attachment 2 Restrictive Covenant  
Attachment 3 Figures

GM/GHC/sdp

**Attachment 1  
Schedule**

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



October 2012

# Ward Transformer Superfund Site Phase 2 - Estes/RDU Estimated Schedule

- Notes:
1. Date when EPA RAP approval and access agreement with B&B/Estes is uncertain. Schedule shown in months from that date.
  2. Schedule dependent on working around Estes operations. Existing stormwater drain beneath Estes will remain in service until new stormwater pipe installed.
  3. Most work at RDU is after Estes is complete because RDU is downstream from Estes.

Phase 2 Work Element Description	2012	2012/2013 (see Note 1)													
	Oct	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Removal Action Planning															
Submit RAP Addendum 2, Revision 7 to EPA															
EPA review of RAP															
Respond to EPA RAP comments															
IC, Property Transfer and Access Agreement															
Estes Removal Action Construction (see Note 2)															
Update and sign contract agreement, issue Notice to Proceed															
Prepare excavation drawings for construction															
Contractor re-mobilization and site preparation															
Remove PCB soil along new stormwater pipe alignment															
Install new stormwater pipe in segments (keep entrance open)															
Remove inlet end and plug old pipe and excavate and restore NE corner															
Excavate and restore along front between entrances															
Prepare temporary stockpile and laydown area on RDU property															
Relocate electric poles along south slope															
Excavate and restore south of Estes building															
Excavate and restore eastern part of south slope at RDU property line															
Remove outlet end of old stormwater pipe and plug pipe remaining															
Excavate and restore south of maintenance building															
Excavate and restore west portion of slope at RDU property line															
RDU Removal Action Construction (see Note 3)															
Excavate and restore east portion of slope with Estes															
Excavate and restore west portion of slope with Estes															
Excavate and restore stream from slope to Lumley Rd.															
Excavate and restores stream south of Lumley Rd.															
Clearing and construct access road to stream west of Lumley Rd. to I-540 area															
Excavate and restore stream west of Lumley Rd. to I-540 at Reach A confluence															
Restore access road and stockpile area															
Contractor de-mobilization															
RA Report															
Prepare draft RA report															
EPA review of draft RA report															
Respond to EPA draft RA report comments															
Submit final RA report															



**Attachment 2  
Restrictive Covenant**

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**

**DECLARATION OF LAND USE RESTRICTIONS  
FOR A FEDERAL SUPERFUND SITE**

**For Property Owned By: DeNovo Morrisville, LLC (owner)**

**Ward Transformer Superfund Site, Raleigh, Wake County, North Carolina**

WHEREAS, DeNovo Morrisville, LLC, a Delaware limited liability company ("DeNovo"), is the owner in fee simple of a tract of land located at 6848 Mt. Herman Road, Cedar Fork Township, Wake County, North Carolina, as more particularly described in the instrument recorded in Book 11642, Page 1643, Wake County Registry (the "Property");

WHEREAS, Estes Express Lines, a Virginia corporation ("Estes"), with an address of 3901 W. Broad Street, Richmond, Virginia 23230, has a leasehold interest in the Property as described in that Memorandum of Lease recorded in Book 5169, Page 730, Wake County Registry;

WHEREAS, this Declaration of Land Use Restrictions (hereinafter "Declaration") is given this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by DeNovo and Estes ("Grantors" or "Declarants"), to the Ward Transformer Site Trust (hereinafter "Grantee"), having an address of 1133 Penn Avenue, Pittsburgh, Pennsylvania 15222;

WHEREAS, the Property is contaminated with hazardous substances, pollutants, or contaminants and is part of a Superfund Site (hereinafter referred to as the "Site") under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and as set forth in an Administrative Settlement Agreement and Order on Consent for Removal Action dated September 16, 2005, entered by the United States Environmental Protection Agency in CERCLA Docket No. CERCLA-04-2005-3778 (the "Settlement Agreement"); and

WHEREAS, this Declaration is part of a removal action plan for the Site approved by the United States Environmental Protection Agency ("EPA") and is entered for the purpose of protecting public health and the environment.

NOW, THEREFORE, Declarants declare that the Property shall be held, leased, sold, encumbered, conveyed, and used subject to the covenants and restrictions set forth herein, which shall run with the land and every part thereof or interest therein and shall be binding upon all owners, tenants, and other parties having any right, title or interest in the Property or any part thereof, and their respective heirs, successors, and assigns.

1. **Enforcement.** The land use restrictions set forth in this Declaration are an integral part of the removal action plan for the contamination at the Site. Adherence to the restrictions is necessary to protect public health and the environment. The Grantee shall be entitled to enforce the terms of this instrument. It is the intention of Declarants and Grantee that, to the extent allowed by law, EPA is a third party beneficiary of this Declaration and, as such,

has the authority to enforce these restrictions. It is expressly agreed that EPA is not a recipient of any real property interest under this Declaration. This Declaration shall inure to the benefit of, and be enforceable by Grantee and EPA. Any attempt to cancel this Declaration without the prior written approval of EPA or its successor in function shall be subject to enforcement, to the extent allowed by law, by EPA. The failure by any party required or authorized to enforce any of the land use restrictions or provisions of this Declaration shall in no event be deemed a waiver of the right to enforce the same or any other restriction or provision thereafter.

2. **Term, Amendment, Replacement, and Termination.** This Declaration shall continue in perpetuity until and unless a document is recorded in the Wake County Registry evidencing the written concurrence of EPA to the amendment, replacement, or termination of this Declaration. Concurrence to terminate the Declaration shall be granted upon achievement of cleanup levels that allow for unrestricted use and unlimited exposure. Any amendment or replacement of this Declaration shall be granted upon the written agreement of Grantors, Grantee and EPA and/or their successors and assigns. Upon recordation of EPA's concurrence, this Declaration shall be null, void, and of no effect whatsoever.

3. **Restrictions on Use of Property.** The Property is hereby subject to the following restrictions within the Restricted Excavation Areas identified on Attachments A and B:

- (a) Removal of those portions of building structures within the Restricted Excavation Areas shown on Attachment A, such that soils underneath are exposed, may only be performed for the activities set forth in Section 3.(d) i. through iv. below.
- (b) The soil within one (1) foot of those parts of building structures within the Restricted Excavation Areas shown on Attachment B, excluding those parts of building structures within the Restricted Excavation Areas shown on Attachment B that are adjacent to the concrete apron slabs, shall not be disturbed below a depth of six (6) inches, except for the activities set forth in Section 3.(d) i. through iv. below.
- (c) The soil at all other locations within the Restricted Excavation Areas shown on Attachment B, except as provided in (a) above, shall not be disturbed below a depth of two (2) feet, except for the activities set forth in Section 3.(d) i. through iv. below.
- (d) The soil within the non-disturbance limits and depths as defined in Section 3.(a) through (c), above, may only be disturbed for the following activities:
  - i. conducting investigations relating to contamination at or near the Site;
  - ii. obtaining samples;
  - iii. assessing the need for, planning, or implementing additional response actions at or near the Site; or

- iv. conducting site development or redevelopment involving soil excavation or disturbance done in accordance with a soil management plan approved by EPA.

4. **Access.** The Grantee, EPA, and the State of North Carolina, and their representatives, contractors, subcontractors, successors, and assigns shall have a right of access at all reasonable times to the Property to conduct response activities, including, but not limited to, a removal action pursuant to the September 14, 2004 Enforcement Action Memorandum, and all amendments thereto, as well as Revision 6 of Addendum No. 2 – Removal Action Plan (RAP), attached hereto as Attachments C and D, respectively. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Declarants' operations by such entry and response.

5. **Severability.** If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

6. **Representations and Warranties.** Declarants hereby represent and warrant that:

- (a) DeNovo holds fee simple title to the Property;
- (b) Estes holds a leasehold interest in the Property as described in the Memorandum of Lease recorded in Book 5169, Page 730, Wake County Registry;
- (c) Declarants have the power and authority to enter into this Declaration, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- (d) Declarants have advised EPA that no other persons own an interest in or hold an encumbrance on the Property; and
- (e) this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Declarants are parties or by which Declarants may be bound or affected.

7. **Future Sales, Leases, Conveyances and Transfers.** When any portion of the Restricted Excavation Areas is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the real property being sold, leased, conveyed, or transferred is a portion of a contaminated area of the site, together with a reference by book and page to the recordation of this Declaration.

*[Signature Page(s) to Follow]*

IN WITNESS WHEREOF, DeNovo has executed this Declaration on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**DeNovo Morrisville, LLC**  
A Delaware limited liability  
company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of **DeNovo Morrisville, LLC**, a Delaware limited liability company, and that he/she, as \_\_\_\_\_, being authorized to do so, executed the foregoing instrument on behalf of the company.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

IN WITNESS WHEREOF, Estes has executed this Declaration on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**Estes Express Lines**  
a Virginia corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of **ESTES EXPRESS LINES**, a Virginia corporation, and that he/she, as \_\_\_\_\_, being authorized to do so, executed the foregoing instrument on behalf of the company.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SEAL]

**APPROVAL AND CERTIFICATION OF**  
**THE WARD TRANSFORMER SITE TRUST**

The foregoing Declaration of Land Use Restrictions is hereby approved and certified this  
\_\_\_\_\_ day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_

\_\_\_\_\_

**APPROVAL AND CERTIFICATION OF**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

The foregoing Declaration of Land Use Restrictions is hereby approved and certified this  
\_\_\_\_\_ day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_

Franklin E. Hill, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 4



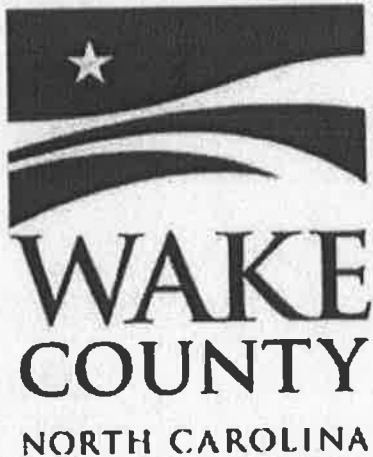
**Attachment 3  
Figures**

**(Provided as separate PDF file)**

**WAKE COUNTY  
REGISTER OF DEEDS  
ADDED FOR SCANNING  
PURPOSE ONLY**



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**Please retain yellow trailer page**

It is part of the recorded document and must be submitted with the original for re-recording.

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**Laura M. Riddick  
Register of Deeds**

Wake County Justice Center  
300 South Salisbury Street, Suite 1700  
Raleigh, NC 27601

☐ New Time Stamp

☐ \$25 Non-Standard Fee

☐ Additional Document Fee

☐ Additional Reference Fee

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\_\_\_\_ # of Time Stamps Needed

**This Document**

12 # of Pages ✓

# APPENDIX E



