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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GATEWAY FOREST PRODUCTS, INC.,  
KETCHIKAN PULP COMPANY, &  
LOUISIANA-PACIFIC CORPORATION,

Defendants.

No. A00-225 CV (JKS)  
(PERRINS)

CERCLA REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

CONSENT DECREE FOR CERCLA  
REMEDIAL DESIGN/REMEDIAL ACTION FOR THE  
KETCHIKAN PULP COMPANY SITE - PAGE 1  
A00-0225--CV (JKS) 06J 10992

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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA  
By JKS Deputy

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12  
13 **I. BACKGROUND**

14 (1) The United States of America (“United States”), on behalf of the  
15 Administrator of the United States Environmental Protection Agency (“EPA”), filed  
16 a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive  
17 Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C.  
18 §§ 9606 and 9607.

19 (2) The United States in its complaint seeks, *inter alia*:

20 (a) Reimbursement of costs incurred by EPA, the Agency for Toxic  
21 Substances and Disease Registry (“ATSDR”), and the United States Department of  
22 Justice (“DOJ”) for response actions at the Ketchikan Pulp Company (“KPC”)  
23 Superfund Site (“the Site”) in Ketchikan, Alaska, together with accrued interest; and

24 (b) Performance of studies and response actions by the defendants  
25 at the Site consistent with the National Oil and Hazardous Substances Pollution

1 Contingency Plan ("NCP"), 40 C.F.R. Part 300, as amended.

2 (3) In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42  
3 U.S.C. § 9621(f)(1)(F), EPA notified the State of Alaska ("the State") on March 31,  
4 2000, of negotiations with potentially responsible parties regarding the  
5 implementation of the remedial design and remedial action for the Site.

6 (4) In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. §  
7 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration and  
8 the U.S. Fish and Wildlife Service on April 13, 2000 of negotiations with potentially  
9 responsible parties regarding the release of hazardous substances that may have  
10 resulted in injury to the natural resources under federal trusteeship and encouraged  
11 the trustees to participate in the negotiation of this Consent Decree.

12 (5) The defendants that have entered into this Consent Decree ("Settling  
13 Defendants") do not admit the allegations in the Complaint or any liability to the  
14 Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor  
15 do they acknowledge that the release or threatened release of hazardous substances  
16 at or from the Site constitutes an imminent and substantial endangerment to the public  
17 health or welfare or the environment.

18 (6) EPA has divided the KPC Site into two operable units ("OUs"): the  
19 Uplands OU and the Marine OU. The scope of the remedy selected in the ROD for  
20 these OUs is described in Paragraph (28)(b) below.

21 (7) In response to a release or a substantial threat of a release of hazardous  
22 substances at or from the Site, KPC commenced a Remedial Investigation/Feasibility  
23 Study ("RI/FS") for the Uplands OU pursuant to an Administrative Order on Consent  
24 ("AOC") dated July 21, 1997. KPC has also performed early response actions under  
25 the AOC. KPC commenced investigatory studies for the Marine OU pursuant to a  
26

1 Consent Decree in U.S. v. Ketchikan Pulp Company, No. A92-587 (JKS)(D.Alaska),  
2 entered pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the Clean Air  
3 Act, 42 U.S.C. §§ 7401 *et seq.*, dated September 19, 1995 (the "CWA/CAA consent  
4 decree").

5 (8) Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published  
6 notice of the proposed plan for remedial action for the Uplands OU on May 14, 1999,  
7 and for the Marine OU on June 30, 1999 and July 14, 1999, in major local  
8 newspapers of general circulation. EPA provided an opportunity for written and oral  
9 comments from the public on the proposed plans for both OUs. A copy of the  
10 transcripts of the public meetings are available to the public as part of the  
11 administrative records upon which the Regional Administrator based the selection of  
12 the response actions.

13 (9) The decisions by EPA on the remedial actions to be implemented for  
14 the OUs at the Site are embodied in two final Records of Decision ("RODs"),  
15 executed on June 7, 2000 for the Uplands OU (Appendix A) and on March 29, 2000  
16 for the Marine OU (Appendix B). The State had reasonable opportunity to review  
17 and has given its concurrence on both RODs. The RODs include responsiveness  
18 summaries to the public comments. Notices of the final plans were published in  
19 accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

20 (10) Based on the information presently available to EPA, EPA believes that  
21 the Work will be properly and promptly conducted by the Settling Defendants in  
22 accordance with the requirements of this Consent Decree and its appendices.

23 (11) Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. §  
24 9613(j), the Remedial Actions selected by the RODs and the Work to be performed  
25 by the Settling Defendants shall constitute response actions taken or ordered by the  
26

1 President.

2 (12) The Parties recognize, and the Court by entering this Consent Decree  
3 finds, that this Consent Decree has been negotiated in good faith and implementation  
4 of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged  
5 and complicated litigation between the Parties, and that this Consent Decree is fair,  
6 reasonable, and in the public interest.

7 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

8 **II. JURISDICTION**

9 (13) This Court has jurisdiction over the subject matter of this action  
10 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b).  
11 This Court also has personal jurisdiction over the Settling Defendants. Solely for the  
12 purposes of this Consent Decree and the underlying complaint, Settling Defendants  
13 waive all objections and defenses that they may have to jurisdiction of the Court or  
14 to venue in this District. Settling Defendants shall not challenge the terms of this  
15 Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

16 **III. PARTIES BOUND**

17 (14) This Consent Decree applies to and is binding upon the United States  
18 and upon Settling Defendants and their respective heirs, successors, and assigns. Any  
19 change in ownership or corporate status of a Settling Defendant, including, but not  
20 limited to, any transfer of assets or real or personal property, shall in no way alter  
21 such Settling Defendant's responsibilities under this Consent Decree.

22 (15) Settling Defendants are defined in Section IV herein as Gateway Forest  
23 Products Company, Inc., Ketchikan Pulp Company, and Louisiana-Pacific  
24 Corporation. Where appropriate, this Consent Decree shall designate which Settling  
25 Defendant is responsible for a specific requirement or for performance of Work under  
26

1 this Consent Decree.

2 (16) Settling Defendants shall provide a copy of this Consent Decree to each  
3 contractor hired to perform the Work (as defined below) required by this Consent  
4 Decree and to each person representing any Settling Defendant with respect to the  
5 Site or the Work and shall condition all contracts entered into hereunder upon  
6 performance of the Work in conformity with the terms of this Consent Decree.  
7 Settling Defendants or their contractors shall provide written notice of the Consent  
8 Decree to all subcontractors hired to perform any portion of the Work required by this  
9 Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring  
10 that their contractors and subcontractors perform the Work contemplated herein in  
11 accordance with this Consent Decree. With regard to the activities undertaken  
12 pursuant to this Consent Decree, each contractor and subcontractor shall be deemed  
13 to be in a contractual relationship with the respective Settling Defendant to which it  
14 has entered into a contract within the meaning of Section 107(b)(3) of CERCLA, 42  
15 U.S.C. § 9607(b)(3).

#### 16 **IV. DEFINITIONS**

17 (17) Unless otherwise expressly provided herein, terms used in this Consent  
18 Decree which are defined in CERCLA or in regulations promulgated under CERCLA  
19 shall have the meaning assigned to them in CERCLA or in such regulations.  
20 Whenever terms listed below are used in this Consent Decree or in the appendices  
21 attached hereto and incorporated hereunder, the following definitions shall apply:

22 (a) "ADEC" shall mean the State of Alaska Department of  
23 Environmental Conservation and any successor departments or agencies of the State.

24 (b) "CERCLA" shall mean the Comprehensive Environmental  
25 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601  
26

1 *et seq.*

2 (c) "Consent Decree" shall mean this Decree and all appendices  
3 attached hereto (listed in Section XXIX). In the event of a conflict between this  
4 Decree and any Appendix, this Decree shall control.

5 (d) "Day" shall mean a calendar day unless expressly stated to be  
6 a working day. "Working day" shall mean a day other than a Saturday, Sunday, or  
7 federal holiday. In computing any period of time under this Consent Decree, where  
8 the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run  
9 until the close of business of the next working day.

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

12 (f) "Future Response Costs" shall mean all costs, including, but not  
13 limited to, direct and indirect costs, that the United States incurs in reviewing or  
14 developing plans, reports, and other items pursuant to this Consent Decree, verifying  
15 the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree,  
16 including, but not limited to, payroll costs, contractor costs, travel costs, laboratory  
17 costs, the costs incurred pursuant to Sections VII and IX (including, but not limited  
18 to, attorneys fees and any monies paid to secure access and/or secure institutional  
19 controls, including the amount of just compensation), XV, and Paragraph (101) of  
20 Section XXI. Future Response Costs shall also include all Interim Response Costs  
21 and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. §  
22 9607(a) during the period from the date of lodging of this Consent Decree to the date  
23 of entry of this Consent Decree. "Future Response Costs" shall not include costs  
24 reimbursed by KPC under the AOC dated July 21, 1997 or costs incurred by ATSDR.

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27 CONSENT DECREE FOR CERCLA  
28 REMEDIAL DESIGN/REMEDIAL ACTION FOR THE  
KETCHIKAN PULP COMPANY SITE - PAGE 8



1 (g) "Gateway Forest Products, Inc." or "Gateway" shall mean the  
2 Alaska corporation licensed to do business in Alaska. Gateway is the current owner  
3 of the former pulp mill area, nearshore fill area, and Patented Tidelands within Ward  
4 Cove.

5 (h) "Institutional Controls Plan" shall mean the document attached  
6 as Appendix C to this Consent Decree that was developed pursuant to Paragraph (43)  
7 of this Consent Decree and approved by EPA and ADEC, and any amendments  
8 thereto.

9 (i) "Interest" shall mean interest at the rate specified for interest on  
10 investments of the Hazardous Substance Superfund established under Subchapter A  
11 of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year,  
12 in accordance with 42 U.S.C. § 9607(a).

13 (j) "Interim Response Costs" shall mean all costs, including direct  
14 and indirect costs (i) paid by the United States in connection with the Site between  
15 December 1, 1999 and the effective date of this Consent Decree, or (ii) incurred prior  
16 to the effective date of this Consent Decree but paid after that date. "Interim  
17 Response Costs" shall not include costs reimbursed by KPC under the AOC dated  
18 July 21, 1997 or costs incurred by ATSDR.

19 (k) "Ketchikan Pulp Company" or "KPC" shall mean the  
20 Washington corporation licensed to do business in Alaska. KPC is a wholly-owned  
21 subsidiary of Louisiana-Pacific Corporation. KPC is the current owner of the wood  
22 waste and ash disposal landfill at the Site.

23 (l) "Louisiana-Pacific Corporation" or "L-P" shall mean the  
24 Delaware corporation which is the parent company of KPC.

1 (m) "Marine Operable Unit" or "Marine OU" shall mean the marine  
2 sediments within Ward Cove, which encompasses approximately 250 acres.

3 (n) "Monitoring Plan" shall mean the "Monitoring and Reporting  
4 Work Plan" developed pursuant to Paragraph (27) of this Consent Decree and  
5 approved by EPA, and any amendments thereto.

6 (o) "National Contingency Plan" or "NCP" shall mean the National  
7 Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to  
8 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any  
9 amendments thereto.

10 (p) "Paragraph" shall mean a portion of this Consent Decree  
11 identified by an Arabic numeral or an upper or lower case letter.

12 (q) "Parties" shall mean the United States and the Settling  
13 Defendants.

14 (r) "Past Response Costs" shall mean all costs, including, but not  
15 limited to, direct and indirect costs, that the United States paid at or in connection  
16 with the Site through November 30, 1999, plus Interest on all such costs which has  
17 accrued pursuant to 42 U.S.C. § 9607(a) through the date of lodging of this Consent  
18 Decree. "Past Response Costs" shall not include costs reimbursed by KPC under the  
19 AOC dated July 21, 1997.

20 (s) "Patented Tidelands" shall mean the area within Ward Cove  
21 depicted in Appendix D hereto.

22 (t) "Plaintiff" shall mean the United States.

23 (u) "Project Management Work Plan" shall mean the work plan  
24 developed pursuant to Paragraph (25) of this Consent Decree and approved by EPA,  
25 and any amendments thereto.

1 (v) "RCRA" shall mean the Solid Waste Disposal Act, as amended,  
2 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery  
3 Act).

4 (w) "Record of Decision" or "ROD" shall mean, as appropriate,  
5 either the EPA and ADEC Record of Decision relating to the Uplands Operable Unit  
6 (Appendix A) signed on June 7, 2000, by the Acting Regional Administrator, EPA  
7 Region 10 and ADEC, or the EPA Record of Decision relating to the Marine  
8 Operable Unit (Appendix B), signed on March 29, 2000, by the Regional  
9 Administrator, EPA Region 10, and all attachments thereto.

10 (x) "Remedial Action" shall mean those activities, except for  
11 activities pursuant to the Monitoring and Reporting Plan, to be undertaken by  
12 KPC/L-P to implement the ROD for the Marine OU, in accordance with the SOW  
13 and the final Remedial Design and Remedial Action Work Plans and other plans  
14 approved by EPA.

15 (y) "Remedial Action Objectives" or "RAOs" are the objectives set  
16 forth in the RODs for the Marine OU and Uplands OU, respectively. EPA expects  
17 that the RAOs for the Marine OU will be attained within ten (10) years of  
18 implementation of the Remedial Action Work Plan for the Marine OU.

19 (z) "Remedial Action Work Plan" shall mean the document  
20 developed pursuant to Paragraph (26) of this Consent Decree and approved by EPA,  
21 and any amendments thereto.

22 (aa) "Remedial Design" shall mean those activities to be undertaken  
23 by the Settling Defendants to develop the final plans and specifications for the  
24 Remedial Action pursuant to the Remedial Design Work Plan.

1 (bb) "Remedial Design Work Plan" shall mean the document  
2 developed pursuant to Paragraph (25) of this Consent Decree and approved by EPA,  
3 and any amendments thereto.

4 (cc) "Section" shall mean a portion of this Consent Decree identified  
5 by a Roman numeral.

6 (dd) "Sediment Cap" shall mean capping materials, mounding or other  
7 materials added to marine sediments as part of the Remedial Action for the Marine  
8 OU.

9 (ee) "Settling Defendants" shall mean Gateway Forest Products, Inc.  
10 (Gateway), Ketchikan Pulp Company (KPC), and Louisiana-Pacific Corporation (L-  
11 P).

12 (ff) "Site" shall mean the Ketchikan Pulp Company Site,  
13 encompassing the Uplands Operable Unit and the Marine Operable Unit, as defined  
14 herein, and as described in Appendix E. For purposes of Section XXI (Covenants  
15 Not To Sue By Plaintiff), Section XXII (Covenants By Settling Defendants), and  
16 Section XXIII (Effect Of Settlement; Contribution Protection), the Site also includes  
17 residential and other soils where hazardous substances from the pulp mill may have  
18 come to be located either as a result of aerial deposition or as a result of the transport  
19 of grit and/or dredge spoil material from the property associated with the former pulp  
20 mill.

21 (gg) "State" shall mean the State of Alaska.

22 (hh) "Statement of Work" or "SOW" shall mean the statement of  
23 work for implementation of the Remedial Design, Remedial Action, and Monitoring  
24 Plans at the Site, as set forth in Appendix F to this Consent Decree and any  
25 modifications made in accordance with this Consent Decree.

1 (ii) "Supervising Contractor" shall mean the principal contractor  
2 retained by the Settling Defendants to supervise and direct the implementation of the  
3 Remedial Action or other Work, as appropriate, under this Consent Decree.

4 (jj) "United States" shall mean the United States of America,  
5 including all of its departments, agencies, and instrumentalities.

6 (kk) "Uplands Operable Unit" or "Uplands OU" shall mean the  
7 former pulp mill area (i.e., where pulping, milling and associated activities occurred),  
8 the wood waste and ash disposal landfill, the dredge spoil area, and the pipeline  
9 access road area.

10 (ll) "Waste Material" shall mean (i) any "hazardous substance"  
11 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or  
12 contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any  
13 "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) or the State  
14 of Alaska Solid Waste Management Regulations (18 AAC 60).

15 (mm) "Work" shall mean all activities Settling Defendants are required  
16 to perform under this Consent Decree, except those required by Section XXV  
17 (Retention of Records).

18 (nn) "Work Plans" shall mean the Work Plans required under Section  
19 VI hereunder.

## 20 **V. GENERAL PROVISIONS**

21 (18) **Objectives of the Parties.** The objectives of the Parties in entering into  
22 this Consent Decree are to protect public health or welfare or the environment at the  
23 Site by the design and implementation of response actions at the Site by Settling  
24 Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of  
25 Plaintiff against Settling Defendants as provided in this Consent Decree.

1           **(19) Commitments by Settling Defendants.**

2           (a) Except as stated in paragraph (c) below, KPC and L-P  
3 (collectively "KPC/L-P") shall finance and perform the Work in accordance with this  
4 Consent Decree, the ROD, the SOW, and all Work Plans and other plans, standards,  
5 specifications, and schedules set forth herein or developed by KPC/L-P and approved  
6 by EPA pursuant to this Consent Decree. KPC/L-P shall also reimburse the United  
7 States for Past Response Costs, Interim Response Costs and Future Response Costs  
8 as provided in this Consent Decree. In addition, with respect to property owned by  
9 KPC, KPC shall be responsible for ensuring access to the Site as provided in  
10 Paragraph (41) below; not interfering with or restricting performance of the Work;  
11 and ensuring compliance with the prescriptions and prohibitions set forth in Paragraph  
12 (43) below that are applicable to KPC.

13           (b) The obligations of KPC and L-P to finance and perform the  
14 Work and to pay amounts owed the United States under this Consent Decree are joint  
15 and several. Between themselves, however, KPC and L-P have agreed that KPC shall  
16 have the primary responsibility to perform all requirements imposed under this  
17 Consent Decree. If KPC fails to perform any requirement imposed under this  
18 Consent Decree, then L-P shall perform or otherwise satisfy the requirement(s)  
19 imposed under this Consent Decree. Nothing in this Paragraph is intended to alter the  
20 rights of KPC or L-P under this Consent Decree, including those pertaining to Dispute  
21 Resolution (Section XIX).

22           (c) With respect to property owned by Gateway, Gateway shall be  
23 responsible for ensuring access to the Site as provided in Paragraphs (41) and (42)  
24 below; not interfering with or restricting performance of the Work; and ensuring  
25 compliance with the prescriptions and prohibitions set forth in Paragraph (43) below  
26

1 that are applicable to Gateway. In addition, Gateway shall finance and perform  
2 requirements set forth in this Consent Decree that are identified as Gateway's  
3 responsibilities, e.g., repairing damage to the Sediment Cap. Gateway shall reimburse  
4 the United States for Future Response Costs that are related to Work to be performed  
5 by Gateway.

6 (20) Compliance with Applicable Law. All activities undertaken by Settling  
7 Defendants pursuant to this Consent Decree shall be performed in accordance with  
8 the requirements of all applicable federal and state laws and regulations. Settling  
9 Defendants must also comply with all applicable or relevant and appropriate  
10 requirements of all federal and state environmental laws as set forth in the ROD and  
11 the SOW. The activities conducted pursuant to this Consent Decree, if approved by  
12 EPA, shall be considered to be consistent with the NCP.

13 (21) Permits.

14 (a) As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e),  
15 and Section 300.400(e) of the NCP, no permit shall be required for any portion of the  
16 Work conducted entirely on-Site (i.e., within the areal extent of contamination or in  
17 very close proximity to the contamination and necessary for implementation of the  
18 Work). Where any portion of the Work that is not on-Site requires a federal or state  
19 permit or approval, Settling Defendants shall submit timely and complete applications  
20 and take all other actions necessary to obtain all such permits or approvals.

21 (b) The Settling Defendants may seek relief under the provisions of  
22 Section XVIII (Force Majeure) of this Consent Decree for any delay in the  
23 performance of the Work resulting from a failure to obtain, or a delay in obtaining,  
24 any permit required for the Work.

1 (c) This Consent Decree is not, and shall not be construed to be, a  
2 permit, issued pursuant to any federal or state statute or regulation.

3 (d) This Consent Decree does not supersede or obviate the need to  
4 obtain permits, or to comply with requirements under existing permits, for activities  
5 that are not part of the Work herein.

6 (22) **Prior Agreements.** KPC/L-P have performed response actions at the  
7 KPC Site pursuant to the prior agreements described in Paragraph (7) above: an AOC  
8 dated July 21, 1997 and a CWA/CAA consent decree dated September 19, 1995.

9 (a) The AOC shall remain in effect until all required response  
10 actions have been completed and ADEC and EPA have issued a certificate of  
11 completion pursuant to Paragraph 35.3 of the AOC.

12 (b) The United States, KPC and L-P will jointly move, on or about  
13 the same time that this Consent Decree is lodged with the Court, for termination of  
14 the CWA/CAA consent decree. Such motion shall request that termination be  
15 effective simultaneously with the entry of this Consent Decree.

16 (23) **Notification of Obligations to Successors-in-Title.**

17 (a) For purposes of this Paragraph (23), the term "Settling  
18 Defendant" means the current owner of real property at the Site (i.e., KPC/L-P or  
19 Gateway, as appropriate).

20 (b) At least seven (7) days prior to the conveyance of any interest  
21 in real property located within the Site including, but not limited to, fee interests,  
22 leasehold interests, and mortgage interests, KPC/L-P or Gateway shall give the  
23 grantee written notice of:

24 (i) This Consent Decree.

25 (ii) The "Environmental Protection Easement and  
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Declaration of Restrictive Covenants” (“Easement/Restrictive Covenants”) recorded on October 28, 1999, in the Ketchikan Recording District.

(iii) Any instrument by which an interest in, or a covenant running with, real property has been conveyed that confers a right of access to the Site (hereinafter referred to as “access easements”) pursuant to Section IX (Access and Institutional Controls).

(iv) Any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as “restrictive easements”) pursuant to Section IX (Access and Institutional Controls).

(c) Within seven (7) days of any such conveyance, KPC/L-P or Gateway shall also give written notice to EPA and the State of the conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, Easement/Restrictive Covenants, access easements, and/or restrictive easements was given to the grantee. This requirement shall not apply, however, to any leasehold or other interest that is less than three (3) months in duration.

(d) In the event of any such conveyance, KPC/L-P’s or Gateway’s obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by KPC/L-P or Gateway. In no event shall the conveyance release or otherwise affect the liability of KPC/L-P or Gateway

1 to comply with all provisions of this Consent Decree, absent the prior written consent  
2 of EPA.

3 **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS**

4 (24) **Selection of Supervising Contractor.**

5 (a) All aspects of the Remedial Action for the Marine OU to be  
6 performed by KPC/L-P pursuant to Sections VI (Performance of the Work by Settling  
7 Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data  
8 Analysis), and XV (Emergency Response) of this Consent Decree shall be under the  
9 direction and supervision of the Supervising Contractor, the selection of which shall  
10 be subject to disapproval by EPA. Within ten (10) days after the lodging of this  
11 Consent Decree, KPC/L-P shall notify EPA in writing, of the name, title, and  
12 qualifications of any contractor proposed to be the Supervising Contractor. EPA will  
13 issue a notice of disapproval or an authorization to proceed. If, at any time thereafter,  
14 KPC/L-P propose to change a Supervising Contractor, KPC/L-P shall give such notice  
15 to EPA and must obtain an authorization to proceed from EPA before the new  
16 Supervising Contractor performs, directs, or supervises any Work under this Consent  
17 Decree.

18 (b) If EPA disapproves a proposed Supervising Contractor, EPA will  
19 notify KPC/L-P, in writing. KPC/L-P shall submit to EPA a list of contractors,  
20 including the qualifications of each contractor, that would be acceptable to them  
21 within thirty (30) days of receipt of EPA's disapproval of the contractor previously  
22 proposed. EPA will provide written notice of the names of any contractor(s) that it  
23 disapproves and an authorization to proceed with respect to any of the other  
24 contractors. KPC/L-P may select any contractor from that list that is not disapproved  
25 and shall notify EPA of the name of the contractor selected within twenty-one (21)

1 days of EPA's authorization to proceed.

2 (c) If EPA fails to provide written notice of its authorization to  
3 proceed or disapproval as provided in this Paragraph and this failure prevents KPC/L-  
4 P from meeting one or more deadlines in a plan approved by EPA pursuant to this  
5 Consent Decree, KPC/L-P may seek relief under the provisions of Section XVIII  
6 (Force Majeure).

7 (d) At EPA's direction, the requirements of this Paragraph (24) shall  
8 apply to Gateway in the event that Gateway is required to perform Work under this  
9 Consent Decree.

10 (25) Remedial Design.

11 (a) Within thirty (30) days after EPA's notice of authorization to  
12 proceed pursuant to Paragraph (24), KPC/L-P shall submit to EPA a Project  
13 Management Work Plan. The Project Management Work Plan shall include:

- 14 (i) The composition and organization of the KPC/L-P's  
15 project team, including quality control and safety  
16 officers.
- 17 (ii) Key project personnel for KPC/L-P and its contractors  
18 and subcontractors at the time of submittal of the Project  
19 Management Work Plan.
- 20 (iii) Contact information (addresses, phone numbers, and e-  
21 mail addresses) for key project personnel.
- 22 (iv) General responsibilities of project team personnel and/or  
23 contractors and subcontractors.
- 24 (v) Qualifications of key project personnel and other  
25 personnel, as appropriate.

1 (vi) Status of any projected contractor procurements.

2 (vii) Schedule for all Work to be performed under the SOW.

3 (b) Within thirty (30) days after EPA's issuance of an authorization  
4 to proceed pursuant to Paragraph (24), KPC/L-P shall submit to EPA a Work Plan for  
5 the design of the Remedial Action for the Marine OU ("Remedial Design Work Plan"  
6 or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of  
7 the remedy set forth in the ROD for the Marine OU, including the Remedial Action  
8 Objectives described therein, and in accordance with the SOW and this Consent  
9 Decree. Upon its approval by EPA, the Remedial Design Work Plan shall be  
10 incorporated into and become enforceable under this Consent Decree.

11 (c) The Remedial Design Work Plan shall identify all remedial  
12 design activities that have already been completed (e.g., EPA's approval of a  
13 Sampling and Analysis Plan, including a Field Sampling Plan, Quality Assurance  
14 Project Plan, and Health and Safety Plan, for field design activities). KPC/L-P shall  
15 meet regularly with EPA throughout the Preliminary and Intermediate Design,  
16 providing to EPA for review those key technical documents that support the remedial  
17 design analysis. The Remedial Design Work Plan shall also include plans and  
18 schedules for implementation of all remedial design and pre-design tasks identified  
19 in the SOW, including, but not limited to, plans and schedules for the completion of:

20 (i) a prefinal design submittal.

21 (ii) a final design submittal.

22 (iii) a schedule for completion of the Remedial Action Work  
23 Plan.

24 (d) The prefinal and final design submittals shall include, at a  
25 minimum, the following:

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- (i) results of additional field sampling and pre-design work.
- (ii) design analysis, including design criteria and basis of design.
- (iii) plans/drawings/sketches and required specifications.
- (iv) proposed locations of processes/construction activity.
- (v) construction schedule.
- (vi) Performance Standard Verification Plan.
- (vii) Construction Quality Assurance Plan (CQAP), which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.
- (viii) Water Quality Monitoring Plan.
- (ix) Final design (100%) shall include final plans and specifications, final cost estimates, and a schedule for the major milestones for construction and implementation of the Remedial Action.

**(26) Remedial Action.**

(a) Within forty-five (45) days after the approval of the final design submittal for the Marine OU, KPC/L-P shall submit to EPA, the Work Plan for the performance of the Remedial Action for the Marine OU ("Remedial Action Work Plan" or "RA Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedies set forth in the ROD for the Marine OU, including the Remedial Action Objectives described therein, and in accordance

1 with the SOW, this Consent Decree, and the design plans and specifications  
2 developed in accordance with the Remedial Design Work Plan and approved by EPA.  
3 Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into  
4 and become enforceable under this Consent Decree. At the same time as they submit  
5 the Remedial Action Work Plans, KPC/L-P shall submit to EPA separate Health and  
6 Safety Plans for field activities required by the Remedial Action Work Plan for the  
7 Marine OU which conform to the applicable Occupational Safety and Health  
8 Administration and EPA requirements including, but not limited to, 29 C.F.R.  
9 § 1910.120.

10 (b) The Remedial Action Work Plan shall include the following  
11 information:

- 12 (i) the schedule of activities and for completion of the  
13 Remedial Action.
- 14 (ii) method for selection of the contractor.
- 15 (iii) schedule for developing and submitting other required  
16 Remedial Action plans.
- 17 (iv) methodology for implementation of the Construction  
18 Quality Assurance Plan.
- 19 (v) methods for satisfying permitting requirements.
- 20 (vi) methodology for implementation of the Monitoring and  
21 Reporting Work Plan (see Paragraph (27) below).
- 22 (vii) formulation of the Remedial Action team.
- 23 (viii) accident prevention plan.
- 24 (ix) construction quality control plan and statement of  
25 qualifications (by constructor).
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- 1 (x) stormwater pollution prevention plan.
- 2 (xi) spill prevention and emergency response plan.
- 3 (xii) materials handling plan.
- 4 (xiii) procedures and plans for the decontamination of
- 5 equipment and the disposal of contaminated materials, as
- 6 appropriate.

7 (c) The Remedial Action Work Plan also shall include a schedule  
8 for implementation of all Remedial Action tasks identified in the final design  
9 submittal and shall identify the initial formulation of KPC/L-P's Remedial Action  
10 Project Team (including, but not limited to, the Supervising Contractor) for the  
11 Marine OU.

12 (d) After approval of the Remedial Action Work Plan, KPC/L-P  
13 shall participate with EPA in a preconstruction inspection and meeting.

14 (e) Upon approval of the Remedial Action Work Plan by EPA,  
15 KPC/L-P shall implement the activities required under the Remedial Action Work  
16 Plan. KPC/L-P shall submit to EPA all plans, submittals, or other deliverables  
17 required under each approved Remedial Action Work Plan in accordance with the  
18 approved schedule for review and approval pursuant to Section XI (EPA Approval of  
19 Plans and Other Submissions). Unless otherwise directed by EPA, KPC/L-P shall not  
20 commence physical Remedial Action activities at the Marine OU prior to approval of  
21 the Remedial Action Work Plan for that OU.

22 (27) **Monitoring and Reporting Work Plan.**

23 (a) Prior to the pre-final construction inspection meeting, KPC/L-P  
24 shall submit to EPA the Monitoring and Reporting Work Plan (Monitoring Plan).

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(b) The Monitoring Plan shall include the following information:

- (i) monitoring objectives.
- (ii) description and schedule for monitoring and laboratory testing requirements.
- (iii) identification of biological standards that will be used to evaluate monitoring data and to measure progress towards achieving the RAOs.
- (iv) description of a process to notify EPA of possible additional responses if the Remedial Action does not achieve RAOs within an adequate time period.
- (v) records and reporting mechanisms.
- (vi) procedures for petitioning EPA to reduce the frequency of or discontinue monitoring.
- (vii) description of monitoring tasks and data collection necessary for addressing circumstances that are deemed to violate the institutional controls identified for the Marine OU.

(c) KPC/L-P shall continue to implement the Remedial Action and Monitoring Plan at the Marine OU until the Remedial Action Objectives are achieved and for so long thereafter as is otherwise required under this Consent Decree.

**(28) Modification of the SOW or Related Work Plans.**

(a) If EPA determines that modification to the Work specified in the SOW and/or in Work Plans developed pursuant to the SOW is necessary to achieve and maintain the Remedial Action Objectives or to carry out and maintain the effectiveness of the remedies set forth in the RODs, EPA may require that such



1 modification be incorporated in the SOW and/or such Work Plans. Provided,  
2 however, that a modification may only be required pursuant to this paragraph to the  
3 extent that it is consistent with the scope of the remedy selected in a ROD. EPA shall  
4 determine which Settling Defendant (KPC/L-P or Gateway) will perform the  
5 modification to the Work consistent with the commitments set forth in Paragraph (19)  
6 above. The requirements of this Paragraph shall apply to KPC/L-P or Gateway,  
7 whichever is designated to perform the modification to the Work.

8 (b) For the purposes of Paragraphs (6), (28), (54), and (66) only, the  
9 "scope of the remedy selected in the ROD" means the following:

10 (i) For the Uplands OU, the requirements set forth in  
11 Section IX of this Consent Decree on access and  
12 institutional controls with respect to hazardous  
13 substances that were not removed during KPC's response  
14 actions under the AOC and which remain at the Site at  
15 levels that preclude unrestricted use.

16 (ii) For the Marine OU, the achievement of RAOs within  
17 approximately 80 acres of marine sediments within the  
18 Area of Concern within Ward Cove as identified in the  
19 ROD dated March 29, 2000. The scope of the remedy  
20 does not include activities associated with a waterbody  
21 recovery plan for Ward Cove or activities necessary to  
22 comply with the NPDES permit for the log transfer  
23 facility in Ward Cove.

24 (c) If KPC/L-P or Gateway objects to any modification determined  
25 by EPA to be necessary pursuant to this paragraph, it may seek dispute resolution  
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1 pursuant to Section XIX (Dispute Resolution), Paragraph (83)(record review). The  
2 SOW and/or related Work Plans shall be modified in accordance with final resolution  
3 of the dispute.

4 (d) KPC/L-P or Gateway shall implement any Work required by any  
5 modifications incorporated in the SOW and/or in Work Plans developed pursuant to  
6 the SOW in accordance with this paragraph.

7 (e) Nothing in this paragraph shall be construed to limit EPA's  
8 authority to require performance of further response actions as otherwise provided in  
9 this Consent Decree.

10 (29) Settling Defendants acknowledge and agree that nothing in this Consent  
11 Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes  
12 a warranty or representation of any kind by Plaintiff that compliance with the Work  
13 requirements set forth in the SOW and the Work Plans will achieve the Remedial  
14 Action Objectives.

15 (30) KPC/L-P or Gateway shall, prior to any off-Site shipment of Waste  
16 Material produced as part of the Work, from the Site to an out-of-state waste  
17 management facility, provide written notification to the appropriate state  
18 environmental official in the receiving facility's state and to the EPA Project  
19 Coordinator of such shipment of Waste Material. However, this notification  
20 requirement shall not apply to any off-Site shipments when the total volume of all  
21 such shipments will not exceed 10 cubic yards.

22 (a) KPC/L-P or Gateway shall include in the written notification the  
23 following information, where available:

24 (i) the name and location of the facility to which the Waste  
25 Material is to be shipped.

- 1 (ii) the type and quantity of the Waste Material to be
- 2 shipped.
- 3 (iii) the expected schedule for the shipment of the Waste
- 4 Material.
- 5 (iv) the method of transportation.

6 (b) KPC/L-P or Gateway shall notify the state in which the planned  
7 receiving facility is located of major changes in the shipment plan, such as a decision  
8 to ship the Waste Material to another facility within the same state, or to a facility in  
9 another state.

10 (c) The identity of the receiving facility and state will be determined  
11 by KPC/L-P or Gateway following the award of the contracts for Remedial Action  
12 construction. KPC/L-P or Gateway shall provide the information required by  
13 Paragraph (30)(a) as soon as practicable after the award of the contract and before the  
14 Waste Material is actually shipped.

15 **VII. REMEDY REVIEW**

16 (31) **Periodic Review.** Consistent with the commitments set forth in  
17 Paragraph (19) above, EPA may request that KPC/L-P or Gateway conduct any  
18 studies and investigations necessary in order to permit EPA to conduct reviews of  
19 whether the Remedial Action and the Institutional Controls Plan are protective of  
20 human health and the environment at least every five (5) years as required by Section  
21 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

22 (32) **EPA Selection of Further Response Actions.** If EPA determines, at  
23 any time, that the Remedial Action or the Institutional Controls Plan is not protective  
24 of human health and the environment, EPA may select further response actions for  
25 the Site in accordance with the requirements of CERCLA and the NCP.

1           (33) **Opportunity To Comment.** KPC/L-P or Gateway and, if required by  
2 Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public,  
3 will be provided with an opportunity to comment on any further response actions  
4 proposed by EPA as a result of the review conducted pursuant to Section 121(c) of  
5 CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during  
6 the comment period.

7           (34) **Settling Defendants' Obligation To Perform Further Response**  
8 **Actions.** If EPA selects further response actions for the Site, EPA shall designate  
9 which Settling Defendant (KPC/L-P or Gateway) shall perform the response action  
10 consistent with the commitments set forth in Paragraph (19) above. KPC/L-P or  
11 Gateway shall undertake such further response actions to the extent that the reopener  
12 conditions in Paragraph (97) or Paragraph (98)(United States' reservations of liability  
13 based on unknown conditions or new information) are satisfied. KPC/L-P or  
14 Gateway may invoke the procedures set forth in Section XIX (Dispute Resolution)  
15 to dispute: (a) EPA's determination that the reopener conditions of Paragraph (97) or  
16 Paragraph (98) of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied; (b)  
17 EPA's determination that the Remedial Action is not protective of human health and  
18 the environment; (c) EPA's selection of the further response actions; or (d) EPA's  
19 designation of KPC/L-P or Gateway to perform the response action. Disputes  
20 pertaining to whether the Remedial Action is protective or to EPA's selection of  
21 further response actions shall be resolved pursuant to Paragraph (83)(record review).

22           (35) **Submissions of Plans.** If KPC/L-P or Gateway is required to perform  
23 the further response actions pursuant to Paragraph (34), KPC/L-P or Gateway shall  
24 submit a plan for such Work to EPA for approval in accordance with the procedures  
25 set forth in Section VI (Performance of the Work by Settling Defendants) and shall  
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1 implement the plan approved by EPA in accordance with the provisions of this  
2 Decree.

3 **VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS**

4 (36) The requirements of this Section apply to the Settling Defendant,  
5 KPC/L-P or Gateway, as appropriate, that is required or designated to perform Work.

6 (37) KPC/L-P or Gateway shall use quality assurance, quality control, and  
7 chain-of-custody procedures for all treatability, design, compliance, and monitoring  
8 samples in accordance with "EPA Requirements for Quality Assurance Project Plans  
9 for Environmental Data Operation" (EPA QA/R5); "Preparing Perfect Project Plans"  
10 (EPA /600/9-88/087), and subsequent amendments to such guidelines upon  
11 notification by EPA to KPC/L-P or Gateway of such amendment. Amended  
12 guidelines shall apply only to procedures conducted after such notification. Prior to  
13 the commencement of any monitoring project under this Consent Decree, KPC/L-P  
14 or Gateway shall submit to EPA for approval a Quality Assurance Project Plan  
15 ("QAPP") that is consistent with the SOW and the NCP. If relevant to the  
16 proceeding, the Parties agree that validated sampling data generated in accordance  
17 with the QAPP(s) and reviewed and approved by EPA shall be admissible as  
18 evidence, without objection, in any proceeding under this Decree. KPC/L-P or  
19 Gateway shall ensure that EPA personnel and their authorized representatives are  
20 allowed access at reasonable times to all laboratories utilized by KPC/L-P or Gateway  
21 in implementing this Consent Decree. In addition, KPC/L-P or Gateway shall ensure  
22 that such laboratories shall analyze all samples submitted by EPA pursuant to the  
23 QAPP for quality assurance monitoring. KPC/L-P or Gateway shall ensure that the  
24 laboratories they utilize for the analysis of samples taken pursuant to this Decree  
25 perform all analyses according to accepted EPA methods. Accepted EPA methods  
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1 consist of the following: (a) those methods which are documented in the USEPA  
2 Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media,  
3 Multi-Concentration, OLM04.1, or the USEPA Contract Laboratory Program  
4 Statement of Work for Inorganic Analysis, Multi-Media, Multi-Concentration,  
5 ILM04.0, and any amendments made thereto during the course of the implementation  
6 of this Consent Decree; (b) the Institutional Controls Sampling and Analysis Plan;  
7 and (c) any other methods that EPA states in writing are acceptable for purposes of  
8 performing Work under this Consent Decree. KPC/L-P or Gateway shall ensure that  
9 all laboratories they use for analysis of samples taken pursuant to this Consent Decree  
10 participate in an EPA or EPA-equivalent QA/QC program. KPC/L-P or Gateway shall  
11 ensure that all field methodologies utilized in collecting samples for subsequent  
12 analysis pursuant to this Consent Decree will be conducted in accordance with the  
13 procedures set forth in the QAPP approved by EPA.

14 (38) Upon request, KPC/L-P or Gateway shall allow split or duplicate  
15 samples to be taken by EPA personnel or their authorized representatives. KPC/L-P  
16 or Gateway shall notify EPA not less than twenty-eight (28) days in advance of any  
17 sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA  
18 shall have the right to take any additional samples that EPA deems necessary. Upon  
19 request, EPA shall allow KPC/L-P or Gateway to take split or duplicate samples of  
20 any samples they take as part of EPA's oversight of KPC/L-P or Gateway's  
21 implementation of the Work.

22 (39) KPC/L-P or Gateway shall submit to EPA five (5) copies of the results  
23 of all sampling and/or tests or other data obtained or generated by or on behalf of  
24 KPC/L-P or Gateway with respect to the Site and/or the implementation of this  
25 Consent Decree unless EPA agrees otherwise.

1 (40) Notwithstanding any provision of this Consent Decree, the United  
2 States hereby retains all of its information gathering and inspection authorities and  
3 rights, including enforcement actions related thereto, under CERCLA, RCRA, and  
4 any other applicable statutes or regulations.

5 **IX. ACCESS AND INSTITUTIONAL CONTROLS**

6 (41) Commencing on the date of lodging of this Consent Decree, KPC/L-P  
7 and Gateway shall provide the United States, EPA, the State, and their authorized  
8 representatives, including their contractors, with access at all reasonable times to the  
9 portion of the Site, or such other property, owned or controlled by KPC/L-P and  
10 Gateway, respectively, for the purpose of conducting any activity related to this  
11 Consent Decree including, but not limited to, the following activities:

- 12 (a) Monitoring the Work.
- 13 (b) Verifying any data or information submitted to the United States  
14 or the State.
- 15 (c) Conducting investigations relating to contamination at or near  
16 the Site.
- 17 (d) Obtaining samples.
- 18 (e) Assessing the need for, planning, or implementing additional  
19 response actions at or near the Site.
- 20 (f) Implementing the Work pursuant to the conditions set forth in  
21 Paragraph (101) of this Consent Decree.
- 22 (g) Inspecting and copying records, operating logs, contracts, or  
23 other documents maintained or generated by Settling Defendants or their agents,  
24 consistent with Section XXIV (Access to Information).

1 (h) Assessing Settling Defendants' compliance with this Consent  
2 Decree.

3 (i) Determining whether the Site or other property is being used in  
4 a manner that is prohibited or restricted, or that may need to be prohibited or  
5 restricted, by or pursuant to this Consent Decree.

6 (42) Commencing on the date of lodging of this Consent Decree, Gateway  
7 shall also provide access to KPC/L-P to perform the Work required under this  
8 Consent Decree.

9 (43) Commencing on the date of lodging of this Consent Decree, KPC/L-P  
10 and Gateway shall refrain -- and shall use their best efforts to ensure that other  
11 persons refrain -- from using the Site, or such other property owned or controlled by  
12 KPC/L-P and Gateway, respectively, in any manner that would interfere with or  
13 adversely affect the integrity or protectiveness of the remedial measures to be  
14 implemented pursuant to this Consent Decree. KPC/L-P and Gateway shall ensure,  
15 with respect to real property owned or controlled by KPC/L-P and Gateway,  
16 respectively, that:

17 (a) For the Uplands OU:

18 (i) Uses of the Site are limited to commercial or industrial  
19 use, except that the pipeline access road may also be  
20 available for recreational use.

21 (ii) The Site shall not, at any time, be used, in whole or in  
22 part, for human habitation, schooling of children,  
23 hospital care, child care or any purpose necessitating  
24 around-the-clock residence by humans.

25 (iii) Drilling of drinking water wells is prohibited.

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- (iv) Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for KPC, dated July 1998, to limit concentrations of arsenic from crushed rock are complied with.
- (v) Soils in the nearshore fill area, soils underneath paved areas or structures at the former pulp mill site, or soils that were not evaluated or characterized during the remedial investigation, that are exposed in the future, e.g., as the result of excavation or demolition activities, shall be properly characterized and managed in accordance with the Institutional Controls Plan (Appendix C) and applicable disposal requirements. Appendix G is a map describing areas of the Site that were characterized during the remedial investigations.
- (vi) No activities will be allowed at the landfill property that involve use of ground water, potential exposure of Waste Materials within the landfill or potential interference with the integrity of the landfill cap.
- (vii) An Institutional Controls Plan that provides for the implementation of the requirements set forth in Paragraph (43)(a)(i) through (vi) above is attached hereto as Appendix C. The Institutional Controls Plan is incorporated into and enforceable under this Consent Decree.

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(b) For the Marine OU:

(i) If projects or activities materially damage the Sediment Cap applied to Patented Tidelands, Gateway shall be required, at the direction of EPA, to redress such impacts, e.g., Gateway shall be required to repair or replace the impacted portions of the Sediment Cap if a dredging project exposes substantial areas of non-native organic-rich sediments and thus adversely affects the continued recovery of the benthic community in the sediments.

(ii) A Monitoring and Reporting Work Plan is required to be submitted pursuant to Paragraph (27) above. This Work Plan shall include provisions for implementation of subparagraph (i) above.

(44) Within forty-five (45) days of entry of this Consent Decree, KPC/L-P shall submit to EPA and ADEC for review and approval a draft easement for the landfill property, in substantially the form attached hereto as Appendix H, that is enforceable under the laws of the State of Alaska, free and clear of all prior liens and encumbrances (except as approved by EPA and ADEC). The draft easement shall provide that:

- (a) The easement runs with the land.
- (b) The easement regulates the former landfill.
- (c) The easement shall include the following information about the

landfill:

- 1 (i) The type of waste that was disposed in the landfill.  
2 (ii) The geographical boundaries of the waste management  
3 area.  
4 (iii) Detailed information about the final cover, cap and other  
5 structures or devices that were installed when the landfill  
6 was closed.

7 (d) The easement grants a right of access to the landfill property for  
8 the purpose of conducting any activity related to this Consent Decree including, but  
9 not limited to, those activities listed in Paragraph (41) of this Consent Decree.

10 (e) The easement grants the right to enforce the land/water use  
11 restrictions listed in Paragraph (43) of this Consent Decree with respect to the landfill  
12 property, or other restrictions that EPA and ADEC determine are necessary to  
13 implement, ensure non-interference with, or ensure the protectiveness of the remedial  
14 measures to be performed pursuant to this Consent Decree.

15 (f) The access rights and the rights to enforce the land/water use  
16 restrictions set forth in the easement are granted to the State of Alaska Department of  
17 Natural Resources ("ADNR").

18 (45) Upon review and approval by EPA and ADEC, KPC shall seek review  
19 and approval of the easement by ADNR.

20 (a) KPC/L-P shall provide survey information to ADNR that  
21 complies with local or state platting requirements and use best efforts to obtain all  
22 other information necessary for ADNR to record the easement.

23 (b) KPC/L-P shall pay reasonable fees charged by the State to  
24 review and record the easement.

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1 (46) If EPA determines that land/water use restrictions in the form of state  
2 or local laws, regulations, ordinances or other governmental controls are needed to  
3 implement the remedy selected in the ROD, ensure the integrity and protectiveness  
4 thereof, or ensure non-interference therewith, KPC/L-P and Gateway shall cooperate  
5 with EPA's and the State's efforts to secure such governmental controls. KPC shall  
6 continue to seek ownership of the pipeline access road area. Within forty-five (45)  
7 days of acquiring such ownership, KPC shall initiate the process of conveying an  
8 easement with respect to the pipeline access road to DNR in accordance with the  
9 procedures and requirements set forth in Paragraphs (44) and (45) above.

10 (47) Notwithstanding any provision of this Consent Decree, the United  
11 States retains all of its access authorities and rights, as well as all of its rights to  
12 require land/water use restrictions, including enforcement authorities related thereto,  
13 under CERCLA, RCRA, and any other applicable statute or regulations.

#### 14 **X. REPORTING REQUIREMENTS**

15 (48) In addition to any other requirement of this Consent Decree, each  
16 Settling Defendant that performs Work (KPC/L-P or Gateway) shall submit to EPA  
17 three (3) copies of written monthly progress reports. With respect to the Remedial  
18 Action for the Marine OU, KPC/L-P shall submit monthly progress reports to EPA  
19 by the tenth day of every month following the lodging of this Consent Decree until  
20 EPA has approved the Final Construction Report and any addenda thereto or until  
21 otherwise required by EPA. Thereafter, KPC/L-P shall submit annual progress  
22 reports within ten (10) days of each anniversary of the effective date of this Consent  
23 Decree until EPA notifies KPC/L-P pursuant to Paragraph (66) of Section XIV  
24 (Certification of Completion). With respect to the Uplands OU, KPC/L-P or Gateway  
25 shall comply with reporting requirements set forth in the Institutional Controls Plan.

1 If requested by EPA, KPC/L-P or Gateway shall also provide briefings for EPA to  
2 discuss the progress of the Work. Each progress report shall, at a minimum:

3 (a) Describe the actions which have been taken toward achieving  
4 compliance with this Consent Decree during the previous month.

5 (b) Include a summary of all nonpreliminary results of sampling and  
6 tests and all other data received or generated by KPC/L-P or Gateway or its  
7 contractors or agents in the previous month. The summary shall identify all reports  
8 generated or received by KPC/L-P or Gateway, including the name of the report, type  
9 of sampling, test or other data included in the report, the author, and the date.

10 (c) Identify all Work Plans, plans, and other deliverables required  
11 by this Consent Decree that have been completed and submitted during the previous  
12 month.

13 (d) Describe all actions, including, but not limited to, data collection  
14 and implementation of Work Plans, which are scheduled for the next six weeks and  
15 provide other information relating to the progress of construction, including, but not  
16 limited to, critical path diagrams, Gantt charts, and Pert charts.

17 (e) Include information regarding percentage of completion,  
18 unresolved delays, encountered or anticipated, that may affect the future schedule for  
19 implementation of the Work, and a description of efforts made to mitigate those  
20 delays or anticipated delays.

21 (f) Include any modifications to the Work Plans or schedules that  
22 KPC/L-P or Gateway has proposed to EPA or that have been approved by EPA.

23 (g) Identify any deviations from approved Work Plans made when  
24 performing work and explain the reason for such deviations.

25 (h) Identify any changes in key project personnel.

1 (i) Describe all activities undertaken in support of the Community  
2 Relations Plan during the previous month and those to be undertaken in the next  
3 six weeks.

4 (49) KPC/L-P or Gateway shall notify EPA of any change in the schedule  
5 described in the monthly progress report for the performance of any activity,  
6 including, but not limited to, data collection and implementation of Work Plans, no  
7 later than seven (7) days prior to the performance of the activity.

8 (50) Upon the occurrence of any event during performance of the Work that  
9 KPC/L-P or Gateway is required to report pursuant to Section 103 of CERCLA, 42  
10 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-  
11 Know Act (EPCRA), KPC/L-P or Gateway shall, within twenty-four (24) hours of  
12 learning of the onset of such event, orally notify the EPA Project Coordinator or the  
13 Alternate EPA Project Coordinator (in the event of the unavailability of the EPA  
14 Project Coordinator), or, in the event that neither the EPA Project Coordinator or  
15 Alternate EPA Project Coordinator is available, the Unit Manager, Emergency  
16 Response and Site Cleanup Unit, Region 10, United States Environmental Protection  
17 Agency. These reporting requirements are in addition to the reporting required by  
18 CERCLA Section 103 or EPCRA Section 304.

19 (51) Within twenty (20) days of learning of the onset of such an event,  
20 KPC/L-P or Gateway shall furnish to EPA a written report, signed by KPC/L-P or  
21 Gateway's Project Coordinator, setting forth the events which occurred and the  
22 measures taken, and to be taken, in response thereto. Within thirty (30) days of the  
23 conclusion of such an event, KPC/L-P or Gateway shall submit a report setting forth  
24 all actions taken in response thereto.

1 (52) KPC/L-P or Gateway shall submit five (5) copies of all plans, reports,  
2 and data required by the SOW, the Remedial Design Work Plan, the Remedial Action  
3 Work Plan, or any other approved plans to EPA in accordance with the schedules set  
4 forth in such plans.

5 (53) All reports and other documents submitted by KPC/L-P or Gateway to  
6 EPA (other than the monthly progress reports referred to above) which purport to  
7 document KPC/L-P or Gateway's compliance with the terms of this Consent Decree  
8 shall be signed by an authorized representative of KPC/L-P or Gateway.

9 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

10 (54) After review of any plan, report, or other item which is required to be  
11 submitted for approval by the Settling Defendant performing Work (KPC/L-P or  
12 Gateway) pursuant to this Consent Decree, EPA shall, consistent with Paragraph  
13 (28)(b) above: (a) approve, in whole or in part, the submission; (b) approve the  
14 submission upon specified conditions; (c) modify the submission to cure the  
15 deficiencies; (d) disapprove, in whole or in part, the submission, directing that  
16 KPC/L-P or Gateway modify the submission; or (e) any combination of the above;  
17 however, EPA shall not modify a submission without first providing KPC/L-P or  
18 Gateway at least one notice of deficiency and an opportunity to cure within twenty  
19 (20) days, except where to do so would cause serious disruption to the Work or where  
20 previous submission(s) have been disapproved due to material defects and the  
21 deficiencies in the submission under consideration indicate a bad faith lack of effort  
22 to submit an acceptable deliverable.

23 (55) In the event of approval, approval upon conditions, or modification by  
24 EPA, pursuant to Paragraph (54)(a), (b), or (c), KPC/L-P or Gateway shall proceed  
25 to take any action required by the plan, report, or other item, as approved or modified  
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1 by EPA subject only to their right to invoke the Dispute Resolution procedures set  
2 forth in Section XIX (Dispute Resolution) with respect to the modifications or  
3 conditions made by EPA. In the event that EPA modifies the submission to cure the  
4 deficiencies pursuant to Paragraph (54)(c) and the submission has a material defect,  
5 EPA retains its right to seek stipulated penalties, as provided in Section XX  
6 (Stipulated Penalties).

7 (56) (a) Upon receipt of a notice of disapproval pursuant to Paragraph  
8 (54)(d), KPC/L-P or Gateway shall, within twenty (20) days or such longer time as  
9 specified by EPA in such notice, correct the deficiencies and resubmit the plan,  
10 report, or other item for approval. Any stipulated penalties applicable to the  
11 submission, as provided in Section XX, shall accrue during the 20-day period or  
12 otherwise specified period but shall not be payable unless the resubmission is  
13 disapproved or modified due to a material defect as provided in Paragraphs (57) and  
14 (58).

15 (b) Notwithstanding the receipt of a notice of disapproval pursuant to  
16 Paragraph (54)(d), KPC/L-P or Gateway shall proceed, at the direction of EPA, to  
17 take any action required by any non-deficient portion of the submission.  
18 Implementation of any non-deficient portion of a submission shall not relieve KPC/L-  
19 P or Gateway of any liability for stipulated penalties under Section XX (Stipulated  
20 Penalties).

21 (57) In the event that a resubmitted plan, report, or other item, or portion  
22 thereof, is disapproved by EPA, EPA may again require KPC/L-P or Gateway to  
23 correct the deficiencies, in accordance with the preceding paragraphs. EPA also  
24 retains the right to modify or develop the plan, report, or other item. KPC/L-P or  
25 Gateway shall implement any such plan, report, or item as modified or developed by  
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1 EPA, subject only to their right to invoke the procedures set forth in Section XIX  
2 (Dispute Resolution).

3 (58) If upon resubmission, a plan, report, or item is disapproved or modified  
4 by EPA due to a material defect, KPC/L-P or Gateway shall be deemed to have failed  
5 to submit such plan, report, or item timely and adequately unless KPC/L-P or  
6 Gateway invokes the dispute resolution procedures set forth in Section XIX (Dispute  
7 Resolution) and EPA's action is overturned pursuant to that Section. The provisions  
8 of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall  
9 govern the implementation of the Work and accrual and payment of any stipulated  
10 penalties during Dispute Resolution. If EPA's disapproval or modification is upheld,  
11 stipulated penalties shall accrue for such violation from the date on which the initial  
12 submission was originally required, as provided in Section XX.

13 (59) All plans, reports, and other items required to be submitted to EPA  
14 under this Consent Decree shall, upon approval or modification by EPA, be  
15 enforceable under this Consent Decree. In the event EPA approves or modifies a  
16 portion of a plan, report, or other item required to be submitted to EPA under this  
17 Consent Decree, the approved or modified portion shall be enforceable under this  
18 Consent Decree.

## 19 **XII. PROJECT COORDINATORS**

20 (60) Within twenty (20) days of lodging this Consent Decree, KPC/L-P,  
21 Gateway and EPA will notify each other, in writing, of the name, address, and  
22 telephone number of their respective designated Project Coordinators and Alternate  
23 Project Coordinators under this Consent Decree. If a Project Coordinator or Alternate  
24 Project Coordinator initially designated is changed, the identity of the successor will  
25 be given to the other Parties at least five (5) working days before the changes occur,  
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1 unless impracticable, but in no event later than the actual day the change is made.  
2 The Settling Defendants' Project Coordinators shall be subject to disapproval by EPA  
3 and shall have the technical expertise sufficient to adequately oversee all aspects of  
4 the Work. The Settling Defendants' Project Coordinators shall not be an attorney for  
5 any of the Settling Defendants in this matter. He or she may assign other  
6 representatives, including other contractors, to serve as a Site representative for  
7 oversight of performance of daily operations during remedial activities.

8 (61) EPA may designate other representatives, including, but not limited to,  
9 EPA employees and federal contractors and consultants, to observe and monitor the  
10 progress of any activity undertaken pursuant to this Consent Decree. EPA's Project  
11 Coordinator(s) and Alternate Project Coordinator(s) shall have the authority lawfully  
12 vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)  
13 by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator(s) or  
14 Alternate Project Coordinator(s) shall have authority, consistent with the NCP, to halt  
15 any Work required by this Consent Decree and to take any necessary response action  
16 when s/he determines that conditions at the Site constitute an emergency situation or  
17 may present an immediate threat to public health or welfare or the environment due  
18 to release or threatened release of Waste Material.

### 19 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

20 (62) Within thirty (30) days of entry of this Consent Decree, KPC/L-P shall  
21 establish and maintain financial security in the amount of \$5 million in one or more  
22 of the following forms:

- 23 (a) A surety bond guaranteeing performance of the Work;
- 24 (b) One or more irrevocable letters of credit equaling the total  
25 estimated cost of the Work;

- 1 (c) A trust fund;
- 2 (d) A guarantee to perform the Work by one or more parent
- 3 corporations or subsidiaries, or by one or more unrelated corporations that have a
- 4 substantial business relationship with KPC and/or L-P; or
- 5 (e) A demonstration that KPC and/or L-P satisfy the requirements
- 6 of 40 C.F.R. § 264.143(f).

7 (63) If KPC and/or L-P seek to demonstrate the ability to complete the Work

8 through a guarantee by a third party pursuant to Paragraph (62)(d) of this Consent

9 Decree, KPC and/or L-P shall demonstrate that the guarantor satisfies the

10 requirements of 40 C.F.R. Part 264.143(f). If KPC and/or L-P seek to demonstrate

11 their ability to complete the Work by means of the financial test or the corporate

12 guarantee pursuant to Paragraph (62)(d) or (e), they shall resubmit sworn statements

13 conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the

14 anniversary of the effective date of this Consent Decree. In the event that EPA

15 determines at any time that the financial assurances provided pursuant to this section

16 are inadequate, KPC and/or L-P shall, within thirty (30) days of receipt of notice of

17 EPA's determination, obtain and present to EPA for approval one of the other forms

18 of financial assurance listed in Paragraph (62) of this Consent Decree. KPC and/or

19 L-P's inability to demonstrate financial ability to complete the Work shall not excuse

20 performance of any activities required under this Consent Decree.

21 (64) If KPC and/or L-P can show that the estimated cost to complete the

22 remaining Work has diminished below the amount set forth in Paragraph (62) above

23 after entry of this Consent Decree, KPC and/or L-P may, on any anniversary date of

24 entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the

25 amount of the financial security provided under this section to the estimated cost of

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1 the remaining Work to be performed. KPC and/or L-P shall submit a proposal for  
2 such reduction to EPA, in accordance with the requirements of this section, and may  
3 reduce the amount of the security upon approval by EPA. In the event of a dispute,  
4 KPC and/or L-P may reduce the amount of the security in accordance with the final  
5 administrative or judicial decision resolving the dispute.

6 (65) KPC and/or L-P may change the form of financial assurance provided  
7 under this section at any time, upon notice to and approval by EPA, provided that the  
8 new form of assurance meets the requirements of this section. In the event of a  
9 dispute, KPC and/or L-P may change the form of the financial assurance only in  
10 accordance with the final administrative or judicial decision resolving the dispute.

#### 11 **XIV. CERTIFICATION OF COMPLETION**

##### 12 **(66) Completion of the Remedial Action.**

13 (a) Within thirty (30) days of receiving certification from the State  
14 that the wood waste and ash disposal landfill has been closed in accordance with the  
15 ADEC solid waste permit and all applicable regulations, KPC/L-P shall submit a  
16 letter to EPA requesting certification of completion of cleanup activities for the  
17 uplands OU. If EPA concludes that all requirements for the uplands OU have been  
18 performed, EPA will so certify, in writing, to KPC/L-P.

19 (b) Within ninety (90) days after KPC/L-P conclude that the  
20 Remedial Action for the Marine OU has been fully performed and the Remedial  
21 Action Objectives have been attained, KPC/L-P shall schedule and conduct a pre-  
22 certification inspection/meeting to be attended by EPA. If, after the pre-certification  
23 inspection/meeting, KPC/L-P still believe that the Remedial Action has been fully  
24 performed and the Remedial Action Objectives have been attained, within thirty (30)  
25 days of the inspection/meeting, they shall submit a written Remedial Action report,  
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1 in accordance with the SOW, requesting certification to EPA for approval, with a  
2 copy to the State, pursuant to Section XI (EPA Approval of Plans and Other  
3 Submissions). In the report, KPC/L-P's Project Coordinator shall state that the  
4 Remedial Action has been completed and the RAOs have been attained in full  
5 satisfaction of the requirements of this Consent Decree. The written report shall  
6 reference the Final Construction Report required under Task 5 of the SOW (Appendix  
7 F). The Remedial Action report shall also contain the following statement, signed by  
8 a responsible corporate official of KPC/L-P or KPC/L-P's Project Coordinator:

9 "To the best of my knowledge, after thorough investigation, I certify  
10 that the information contained in or accompanying this submission is  
11 true, accurate, and complete. I am aware that there are significant  
penalties for submitting false information, including the possibility of  
fine and imprisonment for knowing violations."

12 If, after completion of the pre-certification inspection and receipt and review of the  
13 written report, EPA determines that the Remedial Action or any portion thereof has  
14 not been completed in accordance with this Consent Decree or that the Remedial  
15 Action Objectives have not been achieved, EPA will notify KPC/L-P, in writing, of  
16 the activities that must be undertaken by KPC/L-P pursuant to this Consent Decree  
17 to complete the Remedial Action and achieve the Remedial Action Objectives.  
18 Provided, however, that EPA may only require KPC/L-P to perform such activities  
19 pursuant to this paragraph to the extent that such activities are consistent with the  
20 "scope of the remedy selected in the ROD", as that term is defined in Paragraph  
21 (28)(b). EPA will set forth in the notice a schedule for performance of such activities  
22 consistent with the Consent Decree and the SOW, or require KPC/L-P to submit a  
23 schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and  
24 Other Submissions). KPC/L-P shall perform all activities described in the notice in  
25 accordance with the specifications and schedules established pursuant to this  
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1 paragraph, subject to their right to invoke the dispute resolution procedures set forth  
2 in Section XIX (Dispute Resolution).

3 (c) If EPA concludes, based on the initial or any subsequent report  
4 requesting Certification, that the Remedial Action has been performed in accordance  
5 with this Consent Decree and that the Remedial Action Objectives have been  
6 achieved, EPA will so certify, in writing, to KPC/L-P. This certification, together  
7 with the certification referenced in Paragraph (66)(a) above, shall constitute the  
8 Certification of Completion of the Remedial Action for purposes of this Consent  
9 Decree, including, but not limited to, Section XXI (Covenants Not to Sue by  
10 Plaintiff). Certification of Completion of the Remedial Action shall not affect  
11 Settling Defendants' obligations under this Consent Decree.

#### 12 **XV. EMERGENCY RESPONSE**

13 (67) In the event of any action or occurrence during the performance of the  
14 Work which causes or threatens a release of Waste Material from the Site that  
15 constitutes an emergency situation or may present an immediate threat to public  
16 health, welfare, or the environment, the Settling Defendant performing the Work  
17 (KPC/L-P or Gateway) shall, subject to Paragraph (68), immediately take all  
18 appropriate action to prevent, abate, or minimize such release or threat of release, and  
19 shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator  
20 is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is  
21 available, KPC/L-P or Gateway shall notify the EPA Emergency Response and Site  
22 Cleanup Unit, Region 10. KPC/L-P or Gateway shall take such actions in  
23 consultation with EPA's Project Coordinator or other available authorized EPA officer  
24 and in accordance with all applicable provisions of the Health and Safety Plans, the  
25 Contingency Plans, and any other applicable plans or documents developed pursuant  
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1 to the SOW. In the event that KPC/L-P or Gateway fails to take appropriate response  
2 action as required by this section, and EPA takes such action instead, KPC/L-P or  
3 Gateway shall reimburse EPA all costs of the response action not inconsistent with  
4 the NCP pursuant to Section XVI (Reimbursement of Response Costs).

5 (68) Nothing in the preceding paragraph or in this Consent Decree shall be  
6 deemed to limit any authority of the United States (a) to take all appropriate action  
7 to protect human health and the environment or to prevent, abate, respond to, or  
8 minimize an actual or threatened release of Waste Material on, at, or from the Site,  
9 or (b) to direct or order such action, or seek an order from the Court, to protect human  
10 health and the environment or to prevent, abate, respond to, or minimize an actual or  
11 threatened release of Waste Material on, at, or from the Site, subject to Section XXI  
12 (Covenants Not to Sue by Plaintiff).

#### 13 **XVI. REIMBURSEMENT OF RESPONSE COSTS**

14 (69) Within thirty (30) days of the effective date of this Consent Decree,  
15 KPC/L-P shall pay to the EPA Hazardous Substance Superfund \$371,057.00 in  
16 reimbursement of Past Response Costs, by FedWire electronic Funds Transfer ("EFT"  
17 or wire transfer) to the U.S. Department of Justice account in accordance with current  
18 electronic funds transfer procedures, referencing U.S.A.O. file number 2000V00097,  
19 the EPA Region and Site/Spill ID Numbers 104E (Marine OU) and 104F (Uplands  
20 OU) and DOJ case number 90-11-3-1726. Payment shall be made in accordance with  
21 instructions provided to KPC/L-P by the Financial Litigation Unit of the United States  
22 Attorney's Office for the District of Alaska following lodging of the Consent Decree.  
23 Any payments received by the Department of Justice after 4 p.m. (Eastern Time) will  
24 be credited on the next business day. KPC/L-P shall send notice that such payment  
25 has been made to the United States as specified in Section XXVI (Notices and  
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1 Submissions) and the Region 10 Finance Unit (OMP-146), 1200 Sixth Avenue,  
2 Seattle, WA 98101.

3 (70) KPC/L-P shall reimburse the EPA Hazardous Substance Superfund for  
4 all Future Response Costs not inconsistent with the NCP relating to Work to be  
5 performed by KPC/L-P. Gateway shall reimburse the United States for Future  
6 Response Costs that are related to Work to be performed by Gateway. The United  
7 States will send KPC/L-P or Gateway a bill requiring payment that includes an  
8 Itemized Cost Summary Report on an annual basis. KPC/L-P or Gateway shall make  
9 all payments within thirty (30) days of its receipt of each bill requiring payment,  
10 except as otherwise provided in Paragraph (71). KPC/L-P or Gateway shall make all  
11 payments required by this paragraph in the form of a certified or cashier's check or  
12 checks made payable to "EPA Hazardous Substance Superfund" and referencing the  
13 EPA Region and Site/Spill ID Numbers 104E (Marine OU) and 104F (Uplands OU),  
14 the DOJ case number 90-11-3-1726, and the name and address of the party making  
15 payment. KPC/L-P or Gateway shall send the check(s) to U.S. Environmental  
16 Protection Agency – Region 10, Attn: Superfund Accounting, P.O. Box 360903M,  
17 Pittsburgh, PA 15251 and shall send copies of the check(s) to the United States as  
18 specified in Section XXVI (Notices and Submissions) and the EPA Region 10  
19 Finance Unit (OMP-146), 1200 Sixth Avenue, Seattle, Washington 98101.

20 (71) KPC/L-P or Gateway may contest payment of any Future Response  
21 Costs under Paragraph (70) if they determine that the United States has made an  
22 accounting error or if they allege that a cost item that is included represents costs that  
23 are inconsistent with the NCP. Such objection shall be made, in writing, within thirty  
24 (30) days of receipt of the bill and must be sent to the United States pursuant to  
25 Section XXVI (Notices and Submissions). Any such objection shall specifically



1 identify the contested costs and the basis for objection. In the event of an objection,  
2 KPC/L-P or Gateway shall, within the thirty (30) day period, pay all uncontested  
3 Response Costs to the United States in the manner described in Paragraph (70).  
4 Simultaneously, KPC/L-P or Gateway shall establish an interest-bearing escrow  
5 account in a federally-insured bank duly chartered in the State of Alaska and remit to  
6 that escrow account funds equivalent to the amount of the contested Response Costs.  
7 KPC/L-P or Gateway shall send to the United States, as provided in Section XXVI  
8 (Notices and Submissions) a copy of the transmittal letter and check paying the  
9 uncontested Response Costs, and a copy of the correspondence that establishes and  
10 funds the escrow account, including, but not limited to, information containing the  
11 identity of the bank and bank account under which the escrow account is established  
12 as well as a bank statement showing the initial balance of the escrow account.  
13 Simultaneously with establishment of the escrow account, KPC/L-P or Gateway shall  
14 initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If  
15 the United States prevails in the dispute, within five (5) days of the resolution of the  
16 dispute, KPC/L-P or Gateway shall pay the sums due (with accrued interest) to the  
17 United States in the manner described in Paragraph (70). If KPC/L-P or Gateway  
18 prevail concerning any aspect of the contested costs, KPC/L-P or Gateway shall pay  
19 that portion of the costs (plus associated accrued interest) for which they did not  
20 prevail to the United States in the manner described in Paragraph (70); KPC/L-P or  
21 Gateway shall be disbursed any balance of the escrow account. The dispute  
22 resolution procedures set forth in this paragraph in conjunction with the procedures  
23 set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for  
24 resolving disputes regarding KPC/L-P or Gateway's obligation to reimburse the  
25 United States for its Future Response Costs.

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1 (72) In the event that the payment required by Paragraph (69) is not made  
2 within thirty (30) days of the effective date of this Consent Decree, or the payments  
3 required by Paragraph (70) are not made within thirty (30) days of KPC/L-P's or  
4 Gateway's receipt of the bill, KPC/L-P or Gateway shall pay Interest on the unpaid  
5 balance. The Interest to be paid on Past Response Costs under this paragraph shall  
6 begin to accrue thirty (30) days after the effective date of this Consent Decree. The  
7 Interest on Future Response Costs shall begin to accrue on the date of the bill. The  
8 Interest shall accrue through the date of KPC/L-P's or Gateway's payment. Payments  
9 of Interest made under this paragraph shall be in addition to such other remedies or  
10 sanctions available to Plaintiff by virtue of KPC/L-P's or Gateway's failure to make  
11 timely payments under this section. KPC/L-P or Gateway shall make all payments  
12 required by this paragraph in the manner described in Paragraph (70).

13 **XVII. INDEMNIFICATION AND INSURANCE**

14 (73) **Indemnification.**

15 (a) The United States does not assume any liability by entering into  
16 this agreement or by virtue of any designation of KPC/L-P or Gateway as EPA's  
17 authorized representative(s) under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).  
18 Whenever KPC/L-P or Gateway perform Work, KPC/L-P or Gateway shall  
19 indemnify, save and hold harmless the United States and its officials, agents,  
20 employees, contractors, subcontractors, or representatives for or from any and all  
21 claims or causes of action arising from, or on account of, negligent or other wrongful  
22 acts or omissions of KPC/L-P or Gateway, their officers, directors, employees, agents,  
23 contractors, subcontractors, and any persons acting on their behalf or under their  
24 control, in carrying out activities pursuant to this Consent Decree, including, but not  
25 limited to, any claims arising from any designation of KPC/L-P or Gateway as EPA's

1 authorized representative(s) under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).  
2 Further, KPC/L-P and Gateway agree to pay the United States all costs it incurs  
3 including, but not limited to, attorneys fees and other expenses of litigation and  
4 settlement arising from, or on account of, claims made against the United States based  
5 on negligent or other wrongful acts or omissions of KPC/L-P or Gateway, their  
6 officers, directors, employees, agents, contractors, subcontractors, and any persons  
7 acting on their behalf or under their control, in carrying out activities pursuant to this  
8 Consent Decree. The United States shall not be held out as a party to any contract  
9 entered into by or on behalf of KPC/L-P or Gateway in carrying out activities  
10 pursuant to this Consent Decree. Neither KPC/L-P or Gateway nor any such  
11 contractor shall be considered an agent of the United States.

12 (b) The United States shall give KPC/L-P or Gateway notice of any  
13 claim for which the United States plans to seek indemnification pursuant to Paragraph  
14 (73)(a) and shall consult with KPC/L-P or Gateway prior to settling such claim.

15 (74) Settling Defendants waive all claims against the United States for  
16 damages or reimbursement or for set-off of any payments made or to be made to the  
17 United States arising from or on account of any contract, agreement, or arrangement  
18 between any one or more of Settling Defendants and any person for performance of  
19 Work on or relating to the Site, including, but not limited to, claims on account of  
20 construction delays. In addition, KPC/L-P or Gateway shall indemnify and hold  
21 harmless the United States with respect to any and all claims for damages or  
22 reimbursement arising from or on account of any contract, agreement, or arrangement  
23 between KPC/L-P or Gateway and any person for performance of Work on or relating  
24 to the Site, including, but not limited to, claims on account of construction delays.

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1           **(75) Insurance.** No later than fifteen (15) days before commencing any on-  
2 Site Work, KPC/L-P and Gateway, whichever is performing Work, shall secure, and  
3 shall maintain until the first anniversary of EPA's Certification of Completion of the  
4 Remedial Action pursuant to Paragraph (66) of Section XIV (Certification of  
5 Completion) comprehensive general liability insurance with limits of three million  
6 dollars, combined single limit, automobile liability insurance with limits of one  
7 million dollars, combined single limit, and, for Work performed in the marine OU,  
8 marine liability insurance, collision liability insurance, tower's liability insurance, and  
9 marine pollution liability insurance, all naming the United States as an additional  
10 insured. If marine liability insurance is written in a standard form protection and  
11 indemnity (P&I) policy, separate maritime liability insurance need not be secured.  
12 In addition, for the duration of this Consent Decree, KPC/L-P or Gateway shall  
13 satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable  
14 laws and regulations regarding the provision of worker's compensation insurance for  
15 all persons performing the Work on behalf of KPC/L-P or Gateway in furtherance of  
16 this Consent Decree. Prior to commencement of the Work under this Consent  
17 Decree, KPC/L-P or Gateway shall provide to EPA certificates of such insurance.  
18 KPC/L-P or Gateway shall resubmit such certificates each year on the anniversary of  
19 the effective date of this Consent Decree. If KPC/L-P or Gateway demonstrate by  
20 evidence satisfactory to EPA that any contractor or subcontractor maintains insurance  
21 equivalent to that described above, or insurance covering the same risks but in a lesser  
22 amount, then, with respect to that contractor or subcontractor, KPC/L-P or Gateway  
23 need provide only that portion of the insurance described above which is not  
24 maintained by the contractor or subcontractor.

1 **XVIII. FORCE MAJEURE**

2 (76) "Force Majeure," for purposes of this Consent Decree, is defined as  
3 any event arising from causes beyond the control of the Settling Defendant that is  
4 performing Work (KPC/L-P or Gateway), of any entity controlled by KPC/L-P or  
5 Gateway, or of KPC/L-P's or Gateway's contractors, that delays or prevents the  
6 performance of any obligation under this Consent Decree despite KPC/L-P's or  
7 Gateway's best efforts to fulfill the obligation. The requirement that KPC/L-P or  
8 Gateway exercise "best efforts to fulfill the obligation" includes using best efforts to  
9 anticipate any potential Force Majeure event and best efforts to address the effects of  
10 any potential Force Majeure event (a) as it is occurring, and (b) following the  
11 potential Force Majeure event, such that the delay is minimized to the greatest extent  
12 possible. "Force Majeure" does not include financial inability to complete the Work  
13 or a failure to attain the Remedial Action Objectives.

14 (77) If any event occurs or has occurred that may delay the performance of  
15 any obligation under this Consent Decree, whether or not caused by a Force Majeure  
16 event, KPC/L-P or Gateway shall notify orally EPA's Project Coordinator or, in his  
17 or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's  
18 designated representatives are unavailable, the Director of the Office of  
19 Environmental Cleanup, EPA Region 10, within forty-eight (48) hours of when one  
20 or more of KPC/L-P or Gateway first knew that the event might cause a delay.  
21 Within five (5) days thereafter, KPC/L-P or Gateway shall provide, in writing, to EPA  
22 an explanation and description of the reasons for the delay; the anticipated duration  
23 of the delay; all actions taken or to be taken to prevent or minimize the delay; a  
24 schedule for implementation of any measures to be taken to prevent or mitigate the  
25 delay or the effect of the delay; KPC/L-P or Gateway's rationale for attributing such  
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1 delay to a Force Majeure event if they intend to assert such a claim; and a statement  
2 as to whether, in the opinion of KPC/L-P or Gateway, such event may cause or  
3 contribute to an endangerment to public health, welfare, or the environment. KPC/L-P  
4 or Gateway shall include with any notice all available documentation supporting their  
5 claim that the delay was attributable to a Force Majeure. Failure to comply with the  
6 above requirements shall preclude KPC/L-P or Gateway from asserting any claim of  
7 Force Majeure for that event for the period of time of such failure to comply, and for  
8 any additional delay caused by such failure. KPC/L-P or Gateway shall be deemed  
9 to know of any circumstance of which KPC/L-P or Gateway, any entity controlled by  
10 KPC/L-P or Gateway, or KPC/L-P or Gateway's contractors knew or should have  
11 known.

12 (78) If EPA agrees that the delay or anticipated delay is attributable to a  
13 Force Majeure event, the time for performance of the obligations under this Consent  
14 Decree that are affected by the Force Majeure event will be extended by EPA for such  
15 time as is necessary to complete those obligations. In determining whether any event  
16 constitutes Force Majeure, EPA will give due consideration to the unique  
17 circumstances associated with the Site, including weather and transportation-related  
18 considerations. An extension of the time for performance of the obligations affected  
19 by the Force Majeure event shall not, of itself, extend the time for performance of any  
20 other obligation. If EPA does not agree that the delay or anticipated delay has been  
21 or will be caused by a Force Majeure event, EPA will notify KPC/L-P or Gateway,  
22 in writing, of its decision. If EPA agrees that the delay is attributable to a  
23 Force Majeure event, EPA will notify KPC/L-P or Gateway, in writing, of the length  
24 of the extension, if any, for performance of the obligations affected by the Force  
25 Majeure event.

1 (79) If KPC/L-P or Gateway elect to invoke the dispute resolution  
2 procedures set forth in Section XIX (Dispute Resolution), they shall do so no later  
3 than fifteen (15) days after receipt of EPA's notice. In any such proceeding, KPC/L-P  
4 or Gateway shall have the burden of demonstrating by a preponderance of the  
5 evidence that the delay or anticipated delay has been or will be caused by a Force  
6 Majeure event, that the duration of the delay or the extension sought was or will be  
7 warranted under the circumstances, that best efforts were exercised to avoid and  
8 mitigate the effects of the delay, and that KPC/L-P or Gateway complied with the  
9 requirements of Paragraphs (76) and (77), above. If KPC/L-P or Gateway carry this  
10 burden, the delay at issue shall be deemed not to be a violation by KPC/L-P or  
11 Gateway of the affected obligation of this Consent Decree identified to EPA and the  
12 Court.

### 13 **XIX. DISPUTE RESOLUTION**

14 (80) Unless otherwise expressly provided for in this Consent Decree, the  
15 dispute resolution procedures of this section shall be the exclusive mechanism to  
16 resolve disputes arising under or with respect to this Consent Decree. However, the  
17 procedures set forth in this section shall not apply to actions by the United States to  
18 enforce obligations of the Settling Defendants that have not been disputed in  
19 accordance with this section.

20 (81) Any dispute which arises under or with respect to this Consent Decree  
21 shall in the first instance be the subject of informal negotiations between whichever  
22 Settling Defendant is involved with the dispute (KPC/L-P and/or Gateway), and EPA.  
23 The period for informal negotiations shall not exceed twenty (20) days from the time  
24 the dispute arises, unless it is modified by written agreement of the parties to the  
25 dispute. The dispute shall be considered to have arisen when one party sends the  
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1 other parties a written Notice of Dispute.

2 (82) **Statements of Position.**

3 (a) In the event that the parties cannot resolve a dispute by informal  
4 negotiations under the preceding paragraph, then the position advanced by EPA shall  
5 be considered binding unless, within thirty (30) days after the conclusion of the  
6 informal negotiation period, KPC/L-P and/or Gateway invoke the formal dispute  
7 resolution procedures of this section by serving on the United States (in accordance  
8 with Section XXVI, "Notices and Submissions") a written Statement of Position on  
9 the matter in dispute, including, but not limited to, any factual data, analysis, or  
10 opinion supporting that position and any supporting documentation relied upon by  
11 KPC/L-P and/or Gateway. The Statement of Position shall specify KPC/L-P's and/or  
12 Gateway's position as to whether formal dispute resolution should proceed under  
13 Paragraph (83) or Paragraph (84).

14 (b) Within thirty (30) days after receipt of KPC/L-P and/or  
15 Gateway's Statement of Position, EPA will serve on KPC/L-P and/or Gateway its  
16 Statement of Position, including, but not limited to, any factual data, analysis, or  
17 opinion supporting that position and all supporting documentation relied upon by  
18 EPA. EPA's Statement of Position shall include a statement as to whether formal  
19 dispute resolution should proceed under Paragraph (83) or (84). Within twenty (20)  
20 days after receipt of EPA's Statement of Position, KPC/L-P and/or Gateway may  
21 submit a Reply.

22 (c) If there is disagreement between EPA and KPC/L-P and/or  
23 Gateway as to whether dispute resolution should proceed under Paragraph (83) or  
24 (84), the parties to the dispute shall follow the procedures set forth in the paragraph  
25 determined by EPA to be applicable. However, if KPC/L-P and/or Gateway  
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1 ultimately appeal to the Court to resolve the dispute, the Court shall determine which  
2 paragraph is applicable in accordance with the standards of applicability set forth in  
3 Paragraphs (83) and (84).

4 (83) Formal dispute resolution for disputes pertaining to the selection or  
5 adequacy of any response action and all other disputes that are accorded review on  
6 the administrative record under applicable principles of administrative law shall be  
7 conducted pursuant to the procedures set forth in this paragraph. For purposes of this  
8 paragraph, the adequacy of any response action includes, without limitation: (a) the  
9 adequacy or appropriateness of plans, procedures to implement plans, or any other  
10 items requiring approval by EPA under this Consent Decree; and (b) the adequacy of  
11 the performance of response actions taken pursuant to this Consent Decree. Nothing  
12 in this Consent Decree shall be construed to allow any dispute by KPC/L-P and/or  
13 Gateway regarding the validity of the RODs' provisions.

14 (a) An administrative record of the dispute shall be maintained by  
15 EPA and shall contain all statements of position, including supporting documentation,  
16 submitted pursuant to this section. Where appropriate, EPA may allow submission  
17 of supplemental statements of position by the parties to the dispute.

18 (b) The Director of Office of Environmental Cleanup, EPA Region  
19 10, will issue a final administrative decision resolving the dispute based on the  
20 administrative record described in Paragraph (83)(a). This decision shall be binding  
21 upon KPC/L-P and/or Gateway, subject only to the right to seek judicial review  
22 pursuant to Paragraph (83)(c) and (d).

23 (c) Any administrative decision made by EPA pursuant to Paragraph  
24 (83)(b) shall be reviewable by this Court, provided that a motion for judicial review  
25 of the decision is filed by KPC/L-P and/or Gateway with the Court and served on all  
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1 Parties within ten (10) days of receipt of EPA's decision. The motion shall include  
2 a description of the matter in dispute, the efforts made by the parties to resolve it, the  
3 relief requested, and the schedule, if any, within which the dispute must be resolved  
4 to ensure orderly implementation of this Consent Decree. The United States may file  
5 a response to KPC/L-P and/or Gateway's motion.

6 (d) In proceedings on any dispute governed by this paragraph,  
7 KPC/L-P and/or Gateway shall have the burden of demonstrating that the decision of  
8 the Office of Environmental Cleanup Director is arbitrary and capricious or otherwise  
9 not in accordance with law. Judicial review of EPA's decision shall be on the  
10 administrative record compiled pursuant to Paragraph (83)(a).

11 (84) Formal dispute resolution for disputes that neither pertain to the  
12 selection or adequacy of any response action nor are otherwise accorded review on  
13 the administrative record under applicable principles of administrative law, shall be  
14 governed by this paragraph.

15 (a) Following receipt of KPC/L-P's and/or Gateway's Statement of  
16 Position submitted pursuant to Paragraph (82), the Director of the Office of  
17 Environmental Cleanup, EPA Region 10, will issue a final decision resolving the  
18 dispute. The Office of Environmental Cleanup Director's decision shall be binding  
19 on KPC/L-P and/or Gateway unless, within ten (10) days of receipt of the decision,  
20 KPC/L-P and/or Gateway file with the Court and serve on the parties a motion for  
21 judicial review of the decision setting forth the matter in dispute, the efforts made by  
22 the parties to resolve it, the relief requested, and the schedule, if any, within which  
23 the dispute must be resolved to ensure orderly implementation of the Consent Decree.  
24 The United States may file a response to KPC/L-P's and/or Gateway's motion.

25 (b) Notwithstanding Paragraph (11) of Section I (Background) of  
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1 this Consent Decree, judicial review of any dispute governed by this paragraph shall  
2 be governed by applicable principles of law.

3 (85) The invocation of formal dispute resolution procedures under this  
4 section shall not extend, postpone, or affect in any way any obligation of KPC/L-P  
5 and/or Gateway under this Consent Decree not directly in dispute, unless EPA or the  
6 Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall  
7 continue to accrue but payment shall be stayed pending resolution of the dispute as  
8 provided in Paragraph (92). Notwithstanding the stay of payment, stipulated penalties  
9 shall accrue from the first day of noncompliance with any applicable provision of this  
10 Consent Decree. In the event that KPC/L-P and/or Gateway do not prevail on the  
11 disputed issue, stipulated penalties shall be assessed and paid as provided in Section  
12 XX (Stipulated Penalties).

#### 13 **XX. STIPULATED PENALTIES**

14 (86) A Settling Defendant that fails to comply with requirements under this  
15 Consent Decree (KPC/L-P or Gateway) shall be liable for stipulated penalties in the  
16 amounts set forth in Paragraphs (86)(a) and (b) to the United States for failure to  
17 comply with the requirements of this Consent Decree specified below, unless excused  
18 under Section XVIII (Force Majeure). "Compliance" by KPC/L-P or Gateway shall  
19 include completion of the activities under this Consent Decree or any Work Plan or  
20 other plan approved under this Consent Decree identified below in accordance with  
21 all applicable requirements of law, this Consent Decree, the SOW, any plans or other  
22 documents approved by EPA pursuant to this Consent Decree, and within the  
23 specified time schedules established by and approved under this Consent Decree.

24 (a) The following stipulated penalties shall accrue per violation per  
25 day for failure to submit timely or adequate Work Plans pursuant to Paragraphs (25)  
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1 through (28), failure to commence or complete Work by EPA-approved milestone or  
2 deadline dates, or failure to comply with deadline dates set forth in this Consent  
3 Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 <sup>st</sup> through 30 <sup>th</sup> day
\$5,000	31 <sup>st</sup> through 60 <sup>th</sup> day
\$10,000	61 <sup>st</sup> day and beyond

8 (b) The following stipulated penalties shall accrue per violation per  
9 day for failure to submit adequate or timely reports or other written documents  
10 required under this Consent Decree, including but not limited to, monthly progress  
11 reports, certifications of insurance coverage and financial information.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 <sup>st</sup> through 30 <sup>th</sup> day
\$1,000	31 <sup>st</sup> through 60 <sup>th</sup> day
\$2,500	61 <sup>st</sup> day and beyond

16 (c) KPC/L-P shall not be liable for stipulated penalties set forth in  
17 subparagraphs (a) and (b) above if the stipulated penalty is associated with Work or  
18 any other activity that is assigned solely to Gateway under this Consent Decree.  
19 Similarly, Gateway shall not be liable for stipulated penalties set forth in  
20 subparagraphs (a) and (b) above if the stipulated penalty is associated with Work or  
21 any other activity that is assigned solely to KPC/L-P under this Consent Decree.

22 (87) In the event that EPA assumes performance of a portion or all of the  
23 Work pursuant to Paragraph (101) of Section XXI (Covenants Not to Sue by  
24 Plaintiff), KPC/L-P or Gateway shall be liable for an additional stipulated penalty in  
25 the amount of three (3) times the cost incurred by EPA to perform the Work or the  
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1 amount of \$95,000.00, whichever is less.

2 (88) All penalties shall begin to accrue on the day after the complete  
3 performance is due or the day a violation occurs, and shall continue to accrue through  
4 the final day of the correction of the noncompliance or completion of the activity.  
5 However, stipulated penalties shall not accrue: (a) with respect to a deficient  
6 submission under Section XI (EPA Approval of Plans and Other Submissions), during  
7 the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such  
8 submission until the date that EPA notifies KPC/L-P or Gateway of any deficiency;  
9 (b) with respect to a decision by the Director of the Office of Environmental Cleanup,  
10 EPA Region 10, under Paragraph (83) or (84) of Section XIX (Dispute Resolution),  
11 during the period, if any, beginning on the twenty-first (21st) day after the date that  
12 KPC/L-P or Gateway's reply to EPA's Statement of Position is received until the date  
13 that the Director issues a final decision regarding such dispute; or (c) with respect to  
14 judicial review by this Court of any dispute under Section XIX (Dispute Resolution),  
15 during the period, if any, beginning on the 31st day after the Court's receipt of the  
16 final submission regarding the dispute until the date that the Court issues a final  
17 decision regarding such dispute. Nothing herein shall prevent the simultaneous  
18 accrual of separate penalties for separate violations of this Consent Decree.

19 (89) Following EPA's determination that KPC/L-P or Gateway has failed  
20 to comply with a requirement of this Consent Decree, EPA may give KPC/L-P or  
21 Gateway written notification of the same and describe the noncompliance. EPA may  
22 send KPC/L-P or Gateway a written demand for the payment of the penalties.  
23 However, penalties shall accrue as provided in the preceding paragraph regardless of  
24 whether EPA has notified KPC/L-P or Gateway of a violation.

25 (90) All penalties accruing under this section shall be due and payable to the  
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1 United States within thirty (30) days of KPC/L-P's or Gateway's receipt from EPA  
2 of a demand for payment of the penalties, unless KPC/L-P or Gateway invokes the  
3 Dispute Resolution procedures under Section XIX (Dispute Resolution). All  
4 payments to the United States under this section shall be paid by certified or cashier's  
5 check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed  
6 to: U.S. Environmental Protection Agency – Region 10, Attn: Superfund Accounting,  
7 P.O. Box 360903M, Pittsburgh, PA 15251, and shall indicate that the payment is for  
8 stipulated penalties, and shall reference the EPA Region and Site/Spill ID Numbers  
9 104E (Marine OU) or 104F (Uplands OU), the DOJ case number 90-11-3-1726, and  
10 the name and address of the party making payment. Copies of check(s) paid pursuant  
11 to this section, and any accompanying transmittal letter(s), shall be sent to the United  
12 States as provided in Section XXVI (Notices and Submissions), and to the EPA  
13 Region 10 Finance Unit (OMP-146), 1200 Sixth Avenue, Seattle, Washington.

14 (91) The payment of penalties shall not alter in any way KPC/L-P's or  
15 Gateway's obligation to complete the performance of the Work required under this  
16 Consent Decree.

17 (92) Penalties shall continue to accrue as provided in Paragraph (88) during  
18 any dispute resolution period, but need not be paid until the following:

19 (a) If the dispute is resolved by agreement or by a decision of EPA  
20 that is not appealed to this Court, accrued penalties determined to be owing shall be  
21 paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision  
22 or order;

23 (b) If the dispute is appealed to this Court and the United States  
24 prevails in whole or in part, KPC/L-P or Gateway shall pay all accrued penalties  
25 determined by the Court to be owed to EPA within sixty (60) days of receipt of the  
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1 Court's decision or order, except as provided in Subparagraph (c) below;

2 (c) If the District Court's decision is appealed by any Party, KPC/L-  
3 P or Gateway shall pay all accrued penalties determined by the District Court to be  
4 owing to the United States into an interest-bearing escrow account within sixty (60)  
5 days of receipt of the Court's decision or order. Penalties shall be paid into this  
6 account, as they continue to accrue, at least every sixty (60) days. Within fifteen (15)  
7 days of receipt of the final appellate court decision, the escrow agent shall pay the  
8 balance of the account to EPA or to KPC/L-P or Gateway to the extent that they  
9 prevail.

10 (93) If KPC/L-P or Gateway fails to pay stipulated penalties when due, the  
11 United States may institute proceedings to collect the penalties, as well as Interest.  
12 KPC/L-P or Gateway shall pay Interest on the unpaid balance, which shall begin to  
13 accrue on the date of demand made pursuant to Paragraph (89).

14 (94) Nothing in this Consent Decree shall be construed as prohibiting,  
15 altering, or in any way limiting the ability of the United States to seek any other  
16 remedies or sanctions available by virtue of KPC/L-P or Gateway's violation of this  
17 Decree or of the statutes and regulations upon which it is based, including, but not  
18 limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).  
19 Provided, however, that the United States shall not seek civil penalties pursuant to  
20 Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), for any violation for which a  
21 stipulated penalty is provided herein, except in the case of a willful violation of the  
22 Consent Decree.

23 (95) Notwithstanding any other provision of this section, the United States  
24 may, in its unreviewable discretion, waive any portion of stipulated penalties that  
25 have accrued pursuant to this Consent Decree.

1 **XXI. COVENANTS NOT TO SUE BY PLAINTIFF**

2 (96) In consideration of the actions that will be performed and the payments  
3 that will be made by the Settling Defendants under the terms of the Consent Decree,  
4 and except as specifically provided in Paragraphs (97), (98), and (100) of this section,  
5 the United States covenants not to sue or to take administrative action against Settling  
6 Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and  
7 9607(a), relating to the Site. Except with respect to future liability for Work to be  
8 performed at the Marine OU, these covenants not to sue shall take effect upon the  
9 receipt by EPA of the payments required by Paragraph (69) of Section XVI  
10 (Reimbursement of Response Costs). With respect to future liability for Work to be  
11 performed at the Marine OU, these covenants not to sue shall take effect upon  
12 Certification of Completion of Remedial Action by EPA pursuant to Paragraph  
13 (66)(c) of Section XIV (Certification of Completion). These covenants not to sue are  
14 conditioned upon the satisfactory performance by Settling Defendants of their  
15 obligations under this Consent Decree. These covenants not to sue extend only to the  
16 Settling Defendants and do not extend to any other person.

17 (97) **United States' Pre-Certification Reservations.** Notwithstanding any  
18 other provision of this Consent Decree, the United States reserves, and this Consent  
19 Decree is without prejudice to, the right to institute proceedings in this action or in  
20 a new action, or to issue an administrative order seeking to compel KPC/L-P: (a) to  
21 perform further response actions relating to the Site, or (b) to reimburse the United  
22 States for additional costs of response if, prior to Certification of Completion of the  
23 Remedial Action:

- 24 (i) conditions at the Site, previously unknown to EPA, are  
25 discovered; or  
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1 (ii) information, previously unknown to EPA, is received, in  
2 whole or in part;

3 and these previously unknown conditions or information together with any other  
4 relevant information indicates that the Remedial Action is not protective of human  
5 health or the environment.

6 (98) **United States' Post-certification reservations.** Notwithstanding any  
7 other provision of this Consent Decree, the United States reserves, and this Consent  
8 Decree is without prejudice to, the right to institute proceedings in this action or in  
9 a new action, or to issue an administrative order seeking to compel KPC/L-P (a) to  
10 perform further response actions relating to the Site, or (b) to reimburse the  
11 United States for additional costs of response if, subsequent to Certification of  
12 Completion of the Remedial Action:

13 (i) conditions at the Site, previously unknown to EPA, are  
14 discovered; or

15 (ii) information, previously unknown to EPA, is received, in whole  
16 or in part;

17 and these previously unknown conditions or this information together with other  
18 relevant information indicate that the Remedial Action is not protective of human  
19 health or the environment.

20 (99) For purposes of Paragraph (97), the information and the conditions  
21 known to EPA shall include only that information and those conditions known to EPA  
22 as of the date the ROD was signed for each Operable Unit and only to the extent set  
23 forth in that ROD or the administrative record supporting that ROD. For purposes of  
24 Paragraph (98), the information and the conditions known to EPA shall include only  
25 that information and those conditions known to EPA as of the date of Certification  
26 of Completion of the Remedial Action and set forth in the ROD, the administrative

1 record supporting the ROD, the post-ROD administrative record, or in any  
2 information received by EPA pursuant to the requirements of this Consent Decree  
3 prior to Certification of Completion of the Remedial Action.

4 (100) **General reservations of rights.** The covenants not to sue set forth  
5 above do not pertain to any matters other than those expressly specified in Paragraph  
6 (96). The United States reserves, and this Consent Decree is without prejudice to, all  
7 rights against Settling Defendants with respect to all other matters, including, but not  
8 limited to, the following:

9 (a) Claims based on a failure by Settling Defendants to meet a  
10 requirement of this Consent Decree.

11 (b) Liability arising from the past, present, or future disposal,  
12 release, or threat of release of Waste Materials outside of the Site.

13 (c) Liability for future disposal of Waste Material at the Site, other  
14 than as provided in the ROD, the Work Plan, or otherwise ordered by EPA.

15 (d) Liability for damages for injury to, destruction of, or loss of  
16 natural resources, and for the costs of any natural resource damage assessments.

17 (e) Criminal liability.

18 (f) Liability for violations of federal or state law which occur during  
19 or after implementation of the Remedial Action.

20 (101) **Work Takeover.** In the event EPA determines that KPC/L-P or  
21 Gateway have ceased implementation of any portion of the Work, are seriously or  
22 repeatedly deficient or late in their performance of the Work, or are implementing the  
23 Work in a manner which may cause an endangerment to human health or the  
24 environment, EPA may assume the performance of all or any portions of the Work  
25 as EPA determines necessary. KPC/L-P or Gateway may invoke the procedures set  
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1 forth in Section XIX (Dispute Resolution), Paragraph (83), to dispute EPA's  
2 determination that takeover of the Work is warranted under this paragraph. Costs  
3 incurred by the United States in performing the Work pursuant to this paragraph shall  
4 be considered Future Response Costs that KPC/L-P or Gateway shall pay pursuant  
5 to Section XVI (Reimbursement of Response Costs).

6 (102) Notwithstanding any other provision of this Consent Decree, the United  
7 States retains all authority and reserves all rights to take any and all response actions  
8 authorized by law.

9 **XXII. COVENANTS BY SETTLING DEFENDANTS**

10 (103) **Covenant Not to Sue.** Subject to the reservations in Paragraph (104),  
11 Settling Defendants hereby covenant not to sue and agree not to assert any claims or  
12 causes of action against the United States with respect to the Work, past response  
13 actions, Past Response Costs, Interim Response Costs, Future Response Costs, or this  
14 Consent Decree, including, but not limited to:

15 (a) any direct or indirect claim for reimbursement from the  
16 Hazardous Substance Superfund (established pursuant to the Internal Revenue Code,  
17 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42  
18 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law.

19 (b) any claims against the United States, including any department,  
20 agency, or instrumentality of the United States under Sections 107 or 113 of  
21 CERCLA, 42 U.S.C. §§ 9607 or 9613, with respect to the contamination existing at  
22 the Site as of the effective date of this Consent Decree, or

23 (c) any claims arising out of response activities at the Site, including  
24 claims based on EPA's selection of response actions, oversight of response activities,  
25 or approval of plans for such activities.

1 (104) The Settling Defendants reserve, and this Consent Decree is without  
2 prejudice to, claims against the United States, subject to the provisions of Chapter 171  
3 of Title 28 of the United States Code, for money damages for injury or loss of  
4 property or personal injury or death caused by the negligent or wrongful act or  
5 omission of any employee of the United States while acting within the scope of his  
6 office or employment under circumstances where the United States, if a private  
7 person, would be liable to the claimant in accordance with the law of the place where  
8 the act or omission occurred. However, any such claim shall not include a claim for  
9 any damages caused, in whole or in part, by the act or omission of any person,  
10 including any contractor, who is not a federal employee as that term is defined in 28  
11 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of  
12 response actions, or the oversight or approval of the Settling Defendants' plans or  
13 activities. The foregoing applies only to claims which are brought pursuant to any  
14 statute other than CERCLA and for which the waiver of sovereign immunity is found  
15 in a statute other than CERCLA.

16 (105) Nothing in this Consent Decree shall be deemed to constitute  
17 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.  
18 § 9611, or 40 C.F.R. § 300.700(d).

19 **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

20 (106) Except as expressly provided elsewhere in this Consent Decree, nothing  
21 in this Consent Decree shall be construed to create any rights in, or grant any cause  
22 of action to, any person not a Party to this Consent Decree. The preceding sentence  
23 shall not be construed to waive or nullify any rights that any person not a signatory  
24 to this Consent Decree may have under applicable law. Each of the Parties expressly  
25 reserves any and all rights (including, but not limited to, any right to contribution),  
26

1 defenses, claims, demands, and causes of action which each Party may have with  
2 respect to any matter, transaction, or occurrence relating in any way to the Site against  
3 any person not a Party hereto. Settling Defendants do not intend that this Section  
4 alter or modify agreements between or among KPC, L-P and Gateway.

5 (107) The Parties agree, and by entering this Consent Decree this Court finds,  
6 that the Settling Defendants are entitled, as of the effective date of this Consent  
7 Decree, to protection from contribution actions or claims as provided by Section  
8 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent  
9 Decree.

10 (108) The Settling Defendants agree that with respect to any suit or claim for  
11 contribution brought by them for matters related to this Consent Decree they will  
12 notify the United States, in writing, no later than sixty (60) days prior to the initiation  
13 of such suit or claim.

14 (109) The Settling Defendants also agree that with respect to any suit or claim  
15 for contribution brought against them for matters related to this Consent Decree they  
16 will notify, in writing, the United States within ten (10) days of service of the  
17 complaint on them. In addition, Settling Defendants shall notify the United States  
18 within ten (10) days of service or receipt of any Motion for Summary Judgment and  
19 within ten (10) days of receipt of any order from a court setting a case for trial.

20 (110) In any subsequent administrative or judicial proceeding initiated by the  
21 United States for injunctive relief, recovery of response costs, or other appropriate  
22 relief relating to the Site, Settling Defendants shall not assert, and may not maintain,  
23 any defense or claim based upon the principles of waiver, res judicata, collateral  
24 estoppel, issue preclusion, claim-splitting, or other defenses based upon any  
25 contention that the claims raised by the United States in the subsequent proceeding  
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1 were or should have been brought in the instant case; provided, however, that nothing  
2 in this paragraph affects the enforceability of the covenants not to sue set forth in  
3 Section XXI (Covenants Not to Sue by Plaintiff).

#### 4 **XXIV. ACCESS TO INFORMATION**

5 (111) Settling Defendants shall provide to EPA, upon request, copies of all  
6 documents and information within their possession or control or that of their  
7 contractors or agents relating to activities at the Site or to the implementation of this  
8 Consent Decree, including, but not limited to, sampling, analysis, chain-of-custody  
9 records, manifests, trucking logs, receipts, reports, sample traffic routing,  
10 correspondence, or other documents or information related to the Work. Settling  
11 Defendants shall also use their best efforts to make available to EPA, for purposes of  
12 investigation, information gathering, or testimony, their employees, agents, or  
13 representatives with knowledge of relevant facts concerning the performance of the  
14 Work.

15 (112) (a) **Business Confidentiality.** Settling Defendants may assert business  
16 confidentiality claims covering part or all of the documents or information submitted  
17 to Plaintiff under this Consent Decree to the extent permitted by and in accordance  
18 with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.  
19 § 2.203(b). Documents or information determined to be confidential by EPA will be  
20 afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
21 confidentiality accompanies documents or information when they are submitted to  
22 EPA, or if EPA has notified Settling Defendants that the documents or information  
23 are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C.  
24 § 9604(e)(7), the public may be given access to such documents or information  
25 without further notice to Settling Defendants.

1 (b) **Privileged Information.** The Settling Defendants may assert that certain  
2 documents, records, and other information are privileged under the attorney-client  
3 privilege or any other privilege recognized by federal law. If the Settling Defendants  
4 assert such a privilege in lieu of providing documents, they shall provide Plaintiff  
5 with the following: (i) the title of the document, record, or information; (ii) the date  
6 of the document, record, or information; (iii) the name and title of the author of the  
7 document, record, or information; (iv) the name and title of each addressee and  
8 recipient; (v) a description of the contents of the document, record, or information;  
9 and (vi) the privilege asserted by Settling Defendants. However, no documents,  
10 reports, or other information created or generated pursuant to the requirements of the  
11 Consent Decree shall be withheld on the grounds that they are privileged.

12 (113) No claim of confidentiality shall be made with respect to any data,  
13 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,  
14 scientific, chemical, or engineering data, or any other documents or information  
15 evidencing conditions at or around the Site.

#### 16 **XXV. RETENTION OF RECORDS**

17 (114) Until ten (10) years after the Settling Defendants' receipt of EPA's  
18 notification pursuant to Paragraph (66)(c) of Section XIV (Certification of  
19 Completion of the Work), each Settling Defendant shall preserve and retain all  
20 records and documents now in its possession or control or which come into its  
21 possession or control that relate in any manner to the performance of the Work or  
22 liability of any person for response actions conducted and to be conducted at the Site,  
23 regardless of any corporate retention policy to the contrary. Until ten (10) years after  
24 the Settling Defendants' receipt of EPA's notification pursuant to Paragraph (66)(c)  
25 of Section XIV (Certification of Completion), Settling Defendants shall also instruct  
26

1 their contractors and agents to preserve all documents, records, and information of  
2 whatever kind, nature, or description relating to the performance of the Work.

3 (115) Prior to the conclusion of the ten-year document retention period, the  
4 Settling Defendants may notify EPA's and the State's project managers that Settling  
5 Defendants intend to destroy records that are required to be retained pursuant to  
6 Paragraph (114) above. The notice shall be transmitted no later than ninety (90) days  
7 prior to the intended date of destruction. The notice submitted by Settling Defendants  
8 shall include a general summary of the contents of such documents. If requested by  
9 EPA's or the State's project manager, Settling Defendants shall provide an  
10 opportunity to review such documents. If EPA's or the State's project manager  
11 objects to the destruction of any or all such documents, Settling Defendants shall not  
12 destroy such documents but may invoke the dispute resolution process set forth in  
13 Section XIX herein.

14 (116) Each Settling Defendant hereby certifies individually that, to the best  
15 of its knowledge and belief, after thorough inquiry, it has not altered, mutilated,  
16 discarded, destroyed, or otherwise disposed of any records, documents, or other  
17 information that relate to its potential liability regarding the Site since July 19, 2000,  
18 and that it has fully complied with any and all EPA requests for information pursuant  
19 to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and  
20 Section 3007 of RCRA, 42 U.S.C. § 6927, and the records retention provisions of the  
21 AOC (¶¶ 14.4 through 14.8).

## 22 **XXVI. NOTICES AND SUBMISSIONS**

23 (117) Whenever, under the terms of this Consent Decree, written notice is  
24 required to be given by one Party to another, it shall be directed to the individuals at  
25 the addresses specified below, unless those individuals or their successors give notice  
26



1 of a change to the other Parties, in writing. All notices and submissions shall be  
2 considered effective upon receipt, unless otherwise provided. Written notice as  
3 specified herein shall constitute complete satisfaction of any written notice  
4 requirement of the Consent Decree with respect to the United States, EPA, and the  
5 Settling Defendants, respectively.

6 **AS TO THE UNITED STATES:**

7 Chief, Environmental Enforcement Section  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice  
10 P.O. Box 7611, Ben Franklin Station  
11 Washington, D.C. 20044

12 Re: DOJ case number 90-11-3-1726

13 **AS TO EPA:**

14 **For Uplands Operable Unit:**

15 Dianne Soderlund  
16 EPA Project Coordinator  
17 United States Environmental Protection Agency (AOO/A)  
18 Alaska Operations Office/Anchorage  
19 222 W. 7th Ave. No. 19  
20 Anchorage, AK 99513-7588

21 Amber Wong  
22 Alternate Project Coordinator  
23 United States Environmental Protection Agency (ECL-115)  
24 Region 10  
25 1200 Sixth Avenue  
26 Seattle, Washington 98101

27 **For Marine Operable Unit:**

28 Karen Keeley  
EPA Project Coordinator  
United States Environmental Protection Agency (ECL-111)  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

1 Lori Cohen  
2 Alternate Project Coordinator  
3 United States Environmental Protection Agency (ECL-111)  
4 Region 10  
5 1200 Sixth Avenue  
6 Seattle, Washington 98101

7 **AS TO THE SETTLING DEFENDANTS:**

8 **For Uplands Operable Unit:**

9 Barry Hogarty  
10 KPC/L-P Project Coordinator  
11 Louisiana-Pacific Corp.  
12 7559 North Tongass Highway  
13 Ketchikan, AK 99901

14 Allyn Hayes  
15 Gateway Project Coordinator  
16 Gateway Forest Products, Inc.  
17 7366 North Tongass Highway  
18 Ketchikan, AK 99901

19 **For Marine Operable Unit:**

20 Barry Hogarty  
21 KPC/L-P Project Coordinator  
22 Louisiana-Pacific Corp.  
23 7559 North Tongass Highway  
24 Ketchikan, AK 99901

25 Allyn Hayes  
26 Gateway Project Coordinator  
27 Gateway Forest Products, Inc.  
28 7366 North Tongass Highway  
Ketchikan, AK 99901

29 **XXVII. EFFECTIVE DATE**

30 (118) The effective date of this Consent Decree shall be the date upon which  
31 this Consent Decree is entered by the Court, except as otherwise provided herein.

32 //

33 //

1 **XXVIII. RETENTION OF JURISDICTION**

2 (119) This Court retains jurisdiction over both the subject matter of this  
3 Consent Decree and the Settling Defendants for the duration of the performance of  
4 the terms and provisions of this Consent Decree for the purpose of enabling any of  
5 the Parties to apply to the Court at any time for such further order, direction, and  
6 relief as may be necessary or appropriate for the construction or modification of this  
7 Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve  
8 disputes in accordance with Section XIX (Dispute Resolution) hereof.

9 **XXIX. APPENDICES**

10 (120) The following appendices are attached to and incorporated into this  
11 Consent Decree:

12 "Appendix A" is the ROD for the Uplands OU.

13 "Appendix B" is the ROD for the Marine OU.

14 "Appendix C" is the Institutional Controls Plan.

15 "Appendix D" is a map depicting "Patented Tidelands" within Ward Cove.

16 "Appendix E" is a map describing the Site.

17 "Appendix F" is the Statement of Work.

18 "Appendix G" is a map that shows the uplands areas of the Site that were  
19 characterized during the RI, not including off-site areas that were characterized  
20 as a result of aerial deposition or off-site use of grit or dredge spoil material.

21 A more thorough discussion of areas characterized or evaluated for potential  
22 contamination can be found in the Scoping Document (PTI, 1997) and in the  
23 Work Plan for the Remedial Investigation and Feasibility Study (PTI, 1997).

24 "Appendix H" is a Draft Equitable Servitude [And Easement] [And Right of  
25 Entry] dated November 18, 1999.

1 **XXX. COMMUNITY RELATIONS**

2 (121) EPA intends to amend the community relations plan (the Plan) currently  
3 in existence for the Site. Each Settling Defendant that performs Work (KPC/L-P or  
4 Gateway) shall propose to EPA their participation in the Plan to be amended by EPA.  
5 EPA will determine the appropriate role for KPC/L-P or Gateway under the amended  
6 Plan. KPC/L-P or Gateway shall also cooperate with EPA in providing information  
7 regarding the Work to the public. As requested by EPA, KPC/L-P or Gateway shall  
8 participate in the preparation of such information for dissemination to the public and  
9 in public meetings which may be held or sponsored by EPA to explain activities at  
10 or relating to the Site.

11 **XXXI. MODIFICATION**

12 (122) Schedules specified in this Consent Decree for completion of the Work  
13 may be modified by agreement of EPA and KPC/L-P or Gateway. All such  
14 modifications shall be made in writing.

15 (123) Except as provided in Paragraph (28) ("Modification of the SOW or  
16 related Work Plans"), no material modifications shall be made to the SOW without  
17 written notification to and written approval of the United States, Settling Defendants,  
18 and the Court. Prior to providing its approval to any modification, the United States  
19 will provide the State with a reasonable opportunity to review and comment on the  
20 proposed modification. Modifications to the SOW that do not materially alter that  
21 document may be made by written agreement between EPA, after providing the State  
22 with a reasonable opportunity to review and comment on the proposed modification,  
23 and the Settling Defendants.

24 (124) Nothing in this Decree shall be deemed to alter the Court's power to  
25 enforce, supervise, or approve modifications to this Consent Decree.

1           **XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

2           (125) This Consent Decree shall be lodged with the Court for a period of not  
3 less than thirty (30) days for public notice and comment in accordance with Section  
4 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United  
5 States reserves the right to withdraw or withhold its consent if the comments  
6 regarding the Consent Decree disclose facts or considerations which indicate that the  
7 Consent Decree is inappropriate, improper, or inadequate. Settling Defendants  
8 consent to the entry of this Consent Decree without further notice.

9           (126) If for any reason the Court should decline to approve this Consent  
10 Decree in the form presented, this agreement is voidable at the sole discretion of any  
11 Party and the terms of the agreement may not be used as evidence in any litigation  
12 between the Parties.

13   **XXXIII. SIGNATORIES/SERVICE**

14           (127) Each undersigned representative of a Settling Defendant to this Consent  
15 Decree and the Assistant Attorney General for Environment and Natural Resources  
16 of the United States Department of Justice certifies that he or she is fully authorized  
17 to enter into the terms and conditions of this Consent Decree and to execute and  
18 legally bind such Party to this document.

19           (128) Each Settling Defendant hereby agrees not to oppose entry of this  
20 Consent Decree by this Court or to challenge any provision of this Consent Decree  
21 unless the United States has notified the Settling Defendants, in writing, that it no  
22 longer supports entry of the Consent Decree.

23           (129) Each Settling Defendant shall identify, on the attached signature page,  
24 the name, address, and telephone number of an agent who is authorized to accept  
25 service of process by mail on behalf of that Party with respect to all matters arising  
26

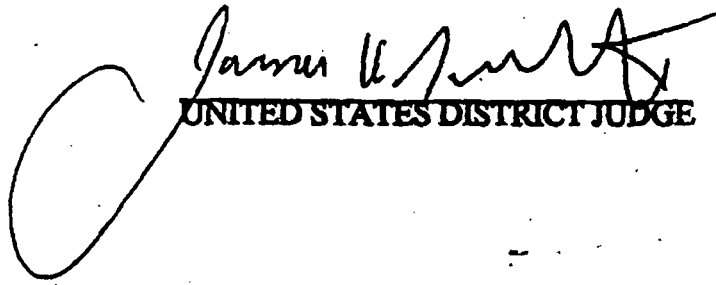
1 under or relating to this Consent Decree. Settling Defendants hereby agree to accept  
2 service in that manner and to waive the formal service requirements set forth in Rule  
3 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court,  
4 including, but not limited to, service of a summons.

5 SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2000.

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8 UNITED STATES DISTRICT JUDGE  
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1 under or relating to this Consent Decree. Settling Defendants hereby agree to accept  
2 service in that manner and to waive the formal service requirements set forth in Rule  
3 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court,  
4 including, but not limited to, service of a summons.

5 SO ORDERED THIS 20 DAY OF November, 2000.

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8 UNITED STATES DISTRICT JUDGE  
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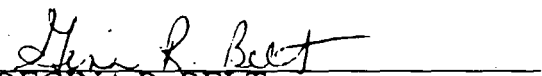
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Gateway Forest Products, et al., relating to the Ketchikan Pulp Company Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 8-2-90

LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

  
BRUCE S. GELBER, Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20044-7611

  
REGINA R. BELT  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
801 B. St., Suite 504  
Anchorage, AK 99501-3657



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Date: 7-28-00

Charles E. Findley  
CHARLES E. FINDLEY  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

Tod A. Gold  
TOD A. GOLD  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, SO-158  
Seattle, Washington 98101

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 United States v. Gateway Forest Products, et al., relating to the Ketchikan Pulp  
3 Company Superfund Site.

4 FOR GATEWAY FOREST PRODUCTS, INC.

5 Date: 7/26/00



6 JAMES K. ERICKSON  
7 President  
8 Gateway Forest Products, Inc.  
9 P.O. Box 779  
10 Ward Cove, Alaska 99928


11 Agent Authorized to Accept Service on Behalf of Above-signed Party:

12 Pete Haller  
13 Ater Wynne LLP  
14 Suite 5450  
15 Two Union Square  
16 Seattle, Washington 98101

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 United States v. Gateway Forest Products, et al., relating to the Ketchikan Pulp  
3 Company Superfund Site.

4 FOR KETCHIKAN PULP COMPANY

5 Date: July 26, 2000

  
6 CHRIS PAULSON  
7 President and General Manager  
8 Ketchikan Pulp Company  
9 P.O. Box 6600  
10 Ketchikan, Alaska 99901

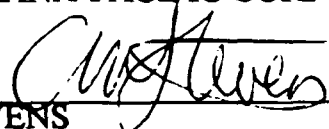
11 Agent Authorized to Accept Service on Behalf of Above-signed Party:

12 Eric B. Fjelstad  
13 Perkins Coie LLP  
14 1029 West Third Avenue, Suite 300  
15 Anchorage, AK 99501-1970  
16  
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 United States v. Gateway Forest Products, et al., relating to the Ketchikan Pulp  
3 Company Superfund Site.

4 FOR LOUISIANA-PACIFIC CORPORATION

5 Date: 7/28/2000

6   
7 CURT STEVENS  
8 Chief Financial Officer  
9 Louisiana-Pacific Corporation  
10 111 S.W. Fifth Avenue  
11 Portland, Oregon 97204

12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

13 Eric B. Fjelstad  
14 Perkins Coie LLP  
15 1029 West Third Avenue, Suite 300  
16 Anchorage, AK 99501-1970  
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APPENDIX A

The ROD for the Uplands OU can be found in Section 3.2 of this file.

**APPENDIX B**

The ROD for the Marine OU can be found in Section 7.11.2 of this file.





APPENDIX C

The Institutional Control Plan can be found in Section 6.2 of this file.

APPENDIX D

# State of Alaska



## Patent

Tidelands No. 3

Know All Men By These Presents that the State of Alaska, pursuant to Article III, Chapter 169, SLA 1959, as amended and in consideration of: A Class I Preference Right pursuant to Article III, Section 5.(2)c, Chapter 169, SLA 1959, as amended, and the rules and regulations promulgated thereunder,

and other good and valuable consideration, does hereby grant to:

KEETCHIKAN PULP COMPANY

KEETCHIKAN, ALASKA

their heirs and assigns, those Tidelands lying seaward of the mean high tide line in Ward Cove, State of Alaska, described as follows:

Parcels of land containing 210.8 acres, more or less, as designated on the official plat thereof, known as Alaska Tidelands Survey No. 1 (CR 745 90K).

Commencing at U.S. M.C. 1, Latitude 55° 24' 30" N., Longitude 131°

43° 10" W.; thence N. 32° 27' W., 155.76 feet to M.C. 1 of U. S. Survey 1056 identical with M.C. 1 of U. S. Survey 1862 and the point of beginning; then, by metes and bounds, S. 29° 30' E., 155.50 feet to M.C. 12 of U. S. Survey 1862, N. 88° 00' E., 348.17 feet to Corner C-5, S. 55° 27' E., 278.00 feet to Corner C-1A, S. 50° 00' W., 378.00 feet to Corner C-2B, S. 22° 00' W., 1250.00 feet to Corner C-3B, S. 50° 00' W., 1389.20 feet to PT-3B, N. 42° 55' W., 100.00 feet to PT-3A, S. 50° 00' W., 2378.94 feet to PT-3, N. 80° 00' W., 1396.76 feet to PT-2, N. 30° 00' E., 590.72 feet to a point on the mean high water meander of U. S. Survey 1993; thence Northeasterly along the mean high water meanders of U. S. Surveys 1993, 1923, 1706, 1754, and 1056 to the point of beginning. Containing 169.1 acres, more or less.

Beginning at the common corner of 2 M.C. of U. S. Survey 1508 and Corner 1 M.C. of U. S. Survey 1659; then, by metes and bounds, N. 2° 27' E., 76.51 feet to Corner PT, S. 50° 00' W., 580.76 feet to Corner PT-3, S. 22° 00' W., 1674.54 feet to Corner PT-2, S. 50° 00' W., 1011.33 feet to Corner PT-1, S. 42° 55' E.,



SHORELINE MEANDERS

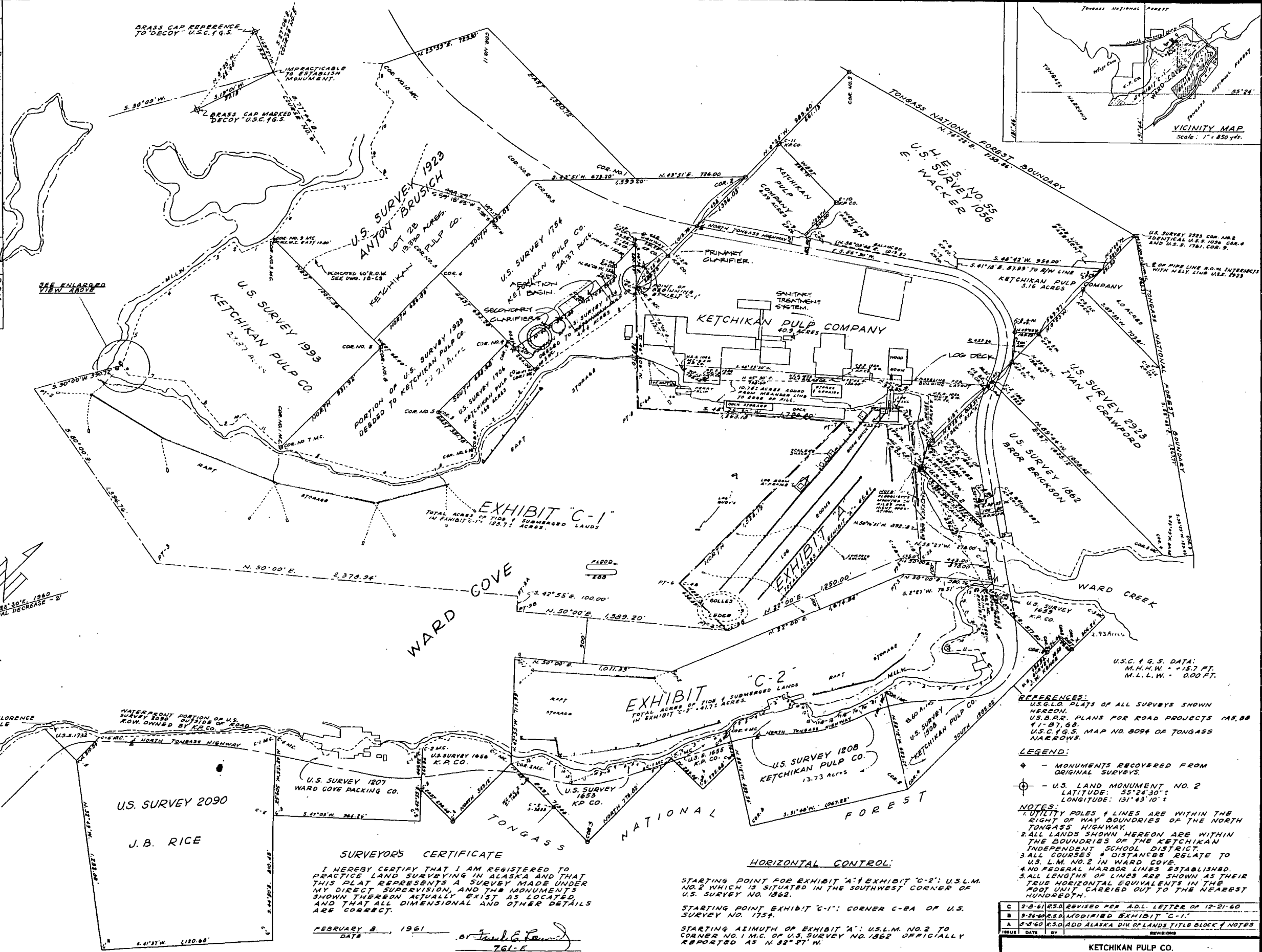
U.S.S. 1208 FROM CORNER 4-M.C.		U.S.S. 1508 FROM CORNER 1-M.C.		U.S.S. 1653 FROM CORNER 1-M.C.				
No.	Course	Dist.	No.	Course	Dist.			
1	N 7° 00' W	69.80	1	N 11° 30' E	138.60	1	S 10° W	132.00
2	N 16° 45' E	39.60	2	N 49° 15' E	104.92	2	S 30° 15' W	36.96
3	N 36° 15' E	66.00	3	N 64° 00' E	84.48	3	N 79° 45' W	64.02
4	N 3° 30' E	59.40	4	N 41° 30' E	121.44	4	S 55° 45' W	62.04
5	N 16° 45' E	72.60	5	N 53° 15' E	68.64	5	S 18° 30' W	38.34
6	N 8° 45' E	74.54	6	N 35° 15' E	51.08	6	S 41° 45' W	44.88
7	N 58° 00' E	39.60	7	N 19° 00' E	31.72	7	S 32° 45' W	36.36
8	S 55° 15' E	39.60	8	N 6° 45' W	66.66	8	S 15° 15' W	48.18
9	N 85° 30' E	39.60	9	N 84° 30' W	88.44	9	S 64° 30' W	60.72
10	N 45° 00' E	39.60	10	N 73° 45' W	82.50	10	S 0° 45' W	44.88
11	N 64° 45' E	59.40	11	S 41° 30' W	203.28	11	S 25° W	120.78
12	S 52° 45' E	66.00	12	S 75° 15' W	28.38	12	S 72° W	21.78
13	S 85° 45' E	59.40	13	N 23° 45' W	29.70	13	N 51° 15' W	44.22
14	N 6° 15' E	44.22	14	N 21° 45' E	223.74	14	S 81° 15' W	44.88
15	N 71° 45' E	39.60	15	N 45° 00' W	45.54	15	S 74° 15' W	165.66
16	N 23° 45' E	65.80	16	S 60° 45' W	58.08	16	S 30° 45' W	211.86
17	N 4° 30' W	39.60	17	N 70° 00' W	139.24	TO CORNER 2-M.C.		
18	N 53° 45' E	46.20	18	N 24° 15' W	45.34			
19	N 17° 30' E	105.60	19	N 7° 00' W	66.66			
20	N 34° 30' E	19.80	20	N 51° 15' E	83.16			
21	N 14° 00' E	158.40	TO CORNER 2-M.C.					
TO CORNER 1-M.C.								

U.S.S. 1655 FROM CORNER 1-M.C.		U.S.S. 1704 FROM CORNER 4-M.C.		U.S.S. 1754 FROM CORNER 5-M.C.				
No.	Course	Dist.	No.	Course	Dist.			
1	N 8° W	36.30	1	N 27° 22' W	140.58	1	N 10° 40' E	547.80
2	N 9° E	89.10	2	N 11° 37' E	220.44	2	N 7° E	264.00
3	N 23° 15' E	136.62	3	N 12° 00' W	324.72	3	N 46° 06' W	73.26
4	N 30° 15' E	130.02	TO CORNER 1-M.C.			TO CORNER 1-M.C.		
5	N 24° E	29.70	TO CORNER 2-M.C.			TO CORNER 2-M.C.		

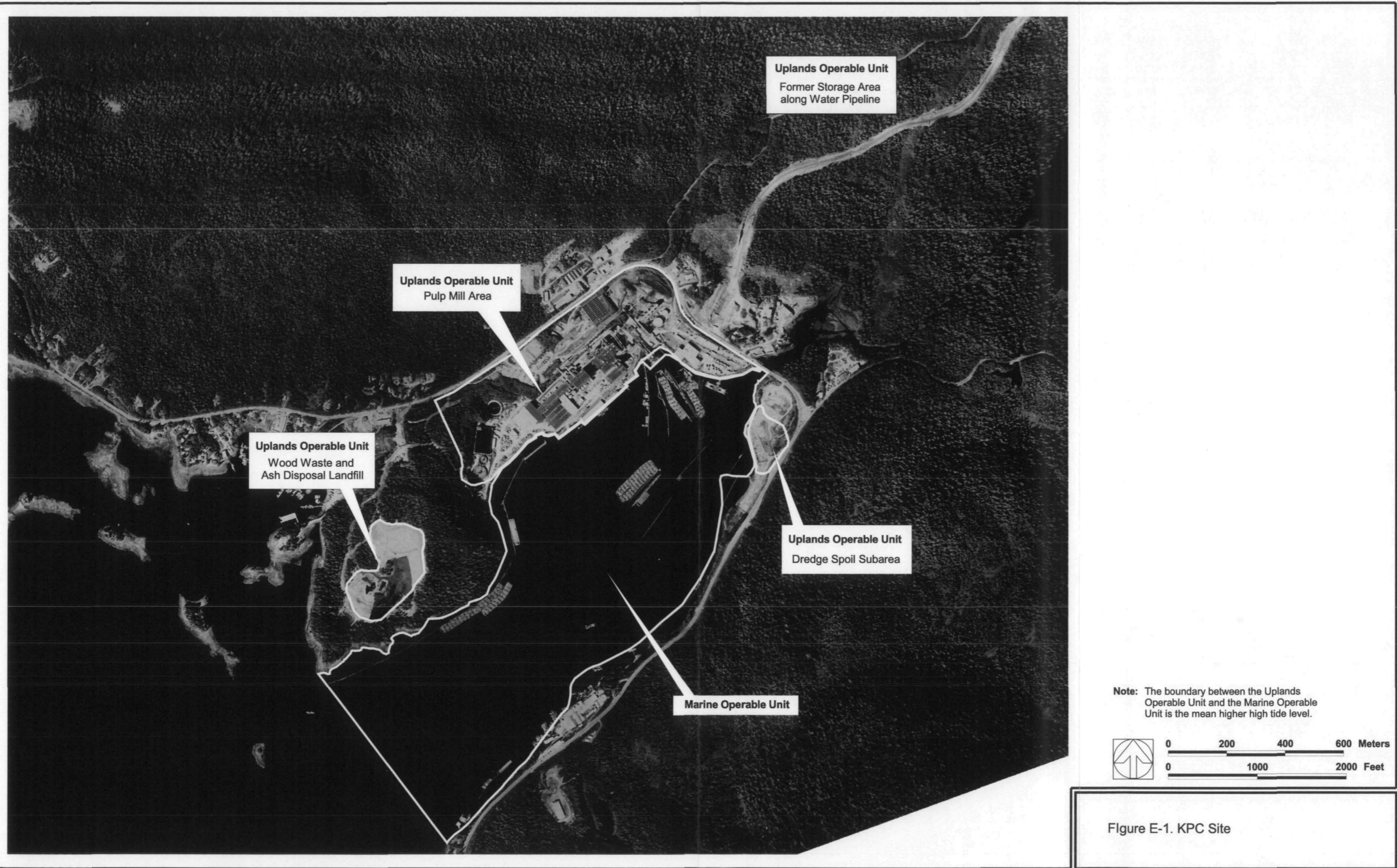
  

U.S.S. 1923 FROM CORNER 6-M.C.		U.S.S. 1993 FROM CORNER 3-M.C.			
No.	Course	Dist.	No.	Course	Dist.
1	S 40° 00' E	46.20	1	S 20° 42' W	227.70
2	SOUTH	19.80	2	N 80° 00' W	85.80
3	S 28° 15' W	488.40	3	S 10° 07' W	82.50
4	S 56° 50' W	241.56	4	S 8° 13' W	664.62
5	S 61° 15' W	587.40	5	S 27° 06' E	392.70
TO CORNER 7-M.C.			6	S 77° 44' E	75.24
FROM CORNER 9-M.C.			7	N 50° 45' E	368.28
6	N 10° 04' W	370.26	8	S 84° 04' E	374.20
7	N 35° 40' E	547.80	9	N 41° 05' E	72.60
8	S 88° 49' W	138.60	10	N 2° 12' W	105.60
9	N 52° 09' W	125.40	11	N 87° 03' E	320.76
10	N 16° 54' W	316.80	TO CORNER 1-M.C.		
11	S 88° 01' W	161.70			
12	N 25° 41' W	145.20			
TO CORNER 10-M.C.					





**APPENDIX E**



**Uplands Operable Unit**  
Former Storage Area  
along Water Pipeline

**Uplands Operable Unit**  
Pulp Mill Area

**Uplands Operable Unit**  
Wood Waste and  
Ash Disposal Landfill

**Uplands Operable Unit**  
Dredge Spoil Subarea

**Marine Operable Unit**

**Note:** The boundary between the Uplands Operable Unit and the Marine Operable Unit is the mean higher high tide level.

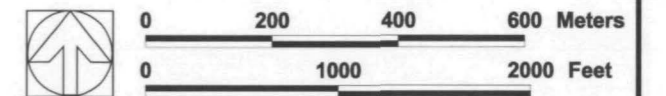


Figure E-1. KPC Site



**APPENDIX F**



## APPENDIX F

### STATEMENT OF WORK FOR REMEDIAL DESIGN, REMEDIAL ACTION, AND LONG-TERM MONITORING

#### KETCHIKAN PULP COMPANY, MARINE OPERABLE UNIT KETCHIKAN, ALASKA

##### I. INTRODUCTION

The Ketchikan Pulp Company (KPC) operated a pulp mill near Ketchikan, Alaska from 1954 to 1997. Activities associated with the pulp mill resulted in releases of hazardous substances to soil and groundwater and marine sediments at and around the pulp mill. The KPC Site is divided into an Uplands Operable Unit (Uplands OU) and a Marine Operable Unit (Marine OU). This Statement of Work (SOW) addresses the Marine OU, which encompasses contaminated marine sediments in Ward Cove adjacent to the former pulp mill. EPA will require KPC and its parent company Louisiana-Pacific (KPC/L-P), which are prior owners of the KPC Site, to perform the work outlined in this SOW.

##### II. PURPOSE

The purpose of this Statement of Work is to set forth requirements for implementation of the Remedial Action and long-term monitoring of the Remedial Action set forth in the Record of Decision (ROD), which was signed by the Regional Administrator of the United States Environmental Protection Agency (EPA), Region 10 on March 29, 2000 for the Ketchikan Pulp Company Site, Marine OU. KPC/L-P shall follow the ROD, the SOW, the approved Remedial Design documents, the approved Remedial Action Work Plan, the approved Monitoring and Reporting Work Plan, EPA Superfund Remedial Design and Remedial Action Guidance, and any additional guidance provided by EPA in submitting deliverables for designing, implementing, and monitoring the Remedial Action at the Ketchikan Pulp Company Site.

##### III. DESCRIPTION OF THE REMEDIAL ACTION AND REMEDIAL ACTION OBJECTIVES

The Selected Remedy outlined in the ROD will be performed within the Area of Concern (AOC) of the Marine OU because surface sediment contamination poses a risk to benthic organisms. The AOC is approximately 80 acres. As defined in the ROD, the Remedial Action Objectives (RAOs) for surface sediment in the AOC are to: 1) reduce toxicity of surface sediments; and, 2) enhance recolonization of surface sediments to support a healthy marine benthic infauna community with multiple taxonomic groups. The Selected Remedy will achieve RAOs through a combination of

thin-layer capping, mounding, navigational dredging of contaminated sediments, and natural recovery.

KPC/L-P shall design and implement the Remedial Action to meet the Remedial Action Objectives (RAOs) and specifications set forth in the ROD and this SOW. Because achievement of the RAOs cannot be measured immediately after implementation of the Remedial Action, long-term monitoring of sediments will be performed in the AOC until RAOs are achieved, as determined by EPA. A Monitoring and Reporting Plan will include specific post-remediation monitoring and data requirements and the establishment of biological standards to evaluate the effectiveness of the Remedial Action and the progress towards achieving the RAOs.

- A. Key Elements of the ROD - The following information is from the Record of Decision; results of the Remedial Design efforts may lead to refinements in the Remedial Action.

1. Placement of Clean Sediment over Existing Contaminated Sediments for Remedial Action

Thin-layer capping: A thin-layer cap (approximately 6- to 12-inches) of clean, sandy material will be placed over contaminated sediments where practicable within the AOC. Thin-layer capping is preferable over mounding. Thin-layer capping is estimated to be practicable over approximately 22 acres, which includes approximately 2 acres that are predicted to be capped after dredging, 2 acres that may be either thin capped or mounded, and approximately 4 acres that are considered transition areas between the different remedial options.

Mounding: Mounds of clean material will be placed in contaminated sediments where thin-layer capping is not practicable, and where mounding is practicable. Mounding will generally be considered practicable in those areas where the organic-rich sediments are less than 5 feet thick and the sediments do not have the bearing capacity to support a thin-layer sediment cap (i.e., the bearing strength is less than 6 pounds per square foot). Mounding is estimated to be practicable over approximately 6 acres.

KPC/L-P shall demonstrate that thin-layer capping and mounding is completed in accordance with the requirements in the ROD. The methods for achieving the objectives for the capped, mounded, and dredged areas shall be set forth in the Performance Standard Verification Plan.

## 2. Dredging of Contaminated Sediment and Disposal in Upland Landfill

Navigational dredging of approximately 17,050 cy of contaminated sediments will be performed in an approximate 3-acre area in the deep draft channel berth area in front of the main dock facility. To allow reasonable access to vessels, it is estimated that this deep draft channel berth area will be dredged to approximately -40 ft MLLW at the bow end of the vessel, and to -44 ft MLLW at the stern end of the vessel. Additionally, dredging of approximately 3,500 cy of contaminated sediments will be performed in an approximate 1-acre area near the planned shallow draft barge berth area in the northeast corner of Ward Cove. To allow reasonable access to log barges, it is estimated that this shallow draft area will be dredged to -14 ft MLLW, provided that bedrock does not extend above this elevation. In both areas, the areal extent of dredging and the dredge depths have been determined to be necessary to maintain current and accommodate reasonably anticipated future navigational needs and because a cap could not be placed in these areas without constraining current and potential future navigational needs.

Dredged sediments will be disposed of at an upland landfill authorized to accept the material. After dredging, a thin-layer cap of clean, sandy material will be placed in dredged areas unless native sediments or bedrock is reached during dredging. Potential propellor scouring will be considered in designing the capping remedy for these areas.

Prior to dredging, sunken logs and associated debris in the area to be dredged will be removed. Logs removed from the dredged areas will be disposed in an authorized landfill unless they can be otherwise used in a manner (e.g., hog fuel) that is acceptable to the regulatory agencies.

KPC/L-P shall design and execute the dredging of existing contaminated sediment and disposal of dredged sediments in an upland landfill that is authorized to accept the material. KPC/L-P shall demonstrate dredging is completed in accordance with the requirements in the ROD. As-builts of the dredged surface shall be provided to EPA for review and approval prior to initiation of capping in the dredged areas. Capping of dredged areas shall not be initiated without EPA's approval. KPC/L-P shall also document to EPA the types (e.g., sediment, logs, metal bindings), quantities (in-place volumes), and disposal locations (e.g., upland landfill) of all material removed from the Marine OU.

### 3. Natural Recovery of Contaminated Sediments

Natural recovery is the Selected Remedy in areas where neither capping nor mounding is practicable. Natural recovery is estimated to be the remedy for approximately 50 acres of the 80-acre AOC, as follows:

- 1) an 8-acre area in the center of Ward Cove and a 2-acre area near Boring Station 8 that exhibit a very high-density of sunken logs (>500 logs/10,000 m<sup>2</sup>);
- 2) a 13.5-acre area where water depth to the bottom of the Cove is greater than -120 ft MLLW and the depth of the sediment is currently considered to be too great to cap;
- 3) a 14.5-acre area where slopes are estimated to be greater than 40 percent and are currently considered to be too steep for capping or mounding material to remain in place;
- 4) an 11-acre area where the organic-rich sediments do not have the bearing capacity (i.e., strength is less than 6 pounds per square foot) to support a sediment cap and are too thick (i.e., thickness is greater than 5 ft) to practicably allow for placement of sediment mounds; and,
- 5) a 0.2-acre area near the sawmill log lift where maintenance dredging generally occurs on an annual basis.

### 4. Achievement of Remedial Action Objectives (RAOs)

The goals and objectives described in Section 8 of the ROD shall be met in both capped/mounded areas and in natural recovery areas, as determined by EPA. KPC/L-P shall, in coordination with EPA, establish biological standards to evaluate the protectiveness of the Remedial Action and whether the RAOs are being achieved. The RAOs are considered the overall performance goal for the project. However, specific performance or method requirements (and associated verification methods and quality control checks) must be identified during Remedial Design to ensure that the Remedial Action is performed in a manner that will achieve RAOs as efficiently and effectively as possible. Performance requirements will identify the desired results of specific remedial actions, but the remedial action construction contractor will determine the method for meeting the performance requirements. Method requirements will identify specific requirements for implementing the remedial action and the method by which to perform the remedial action. As an example, for dredging of contaminated sediments, performance requirements will identify target dredge areas, dredge

depths, and removal volumes, while method requirements will identify the type of equipment, vessel positioning techniques, and production rates. Completion and approval of documents required by this SOW is also considered a performance standard.

5. Other Work

KPC/L-P shall address subtidal sediments associated with an intermittent sheen in a localized area near the east end of the main dock through dredging and disposal of suspected PAH-contaminated sediments, as deemed appropriate by EPA.

6. Monitoring and Reporting Work Plan

KPC/L-P shall conduct long-term monitoring of the Remedial Action as part of the requirements to be established in the Monitoring and Reporting Work Plan. Long-term monitoring of surface sediments in both capped/mounded areas and in natural recovery areas will be performed until RAOs are achieved, as determined by EPA. The long-term effectiveness of sediment remediation in the AOC in Ward Cove will be demonstrated by a reduction in sediment toxicity and the existence of a healthy benthic community in the sediments.

**IV. SCOPE OF REMEDIAL DESIGN AND REMEDIAL ACTION**

The Remedial Design/Remedial Action shall consist of five tasks, as follows:

Task 1 - Project Management Work Plan

Task 2 - Remedial Design Work Plan

Task 3 - Remedial Design Phases

Task 4 - Remedial Action Work Plan

Task 5 - Remedial Action/Construction

- A. Preconstruction Meeting
- B. Prefinal Inspection/Meeting
- C. Final Inspection/Meeting
- D. Reports

1. Final Construction Report

## 2. Final Remedial Action Report

### Task 6 - Monitoring and Reporting Work Plan

Additional details on each task are provided below. All documents, including Work Plans, reports, and memoranda, required under this SOW are subject to EPA review and approval. Unless otherwise specified by EPA, a draft version of each document shall be submitted to EPA for review and comment. Within thirty (30) calendar days of receipt of EPA's comments on a draft document, the Prior Owner shall submit to EPA a revised final document that incorporates EPA's modifications or summarizes and addresses EPA's concerns. This SOW also specifies submittal of certain documentation (e.g., construction progress reports) that will be used by EPA for informational purposes only but will not be formally approved by EPA.

#### Task 1. Project Management Work Plan

For Work to be implemented under this SOW, KPC/L-P shall submit to EPA a Project Management Work Plan that describes the composition and organization of the project team including quality control and safety officers; key project personnel for KPC/L-P and known contractors and subcontractors at the time of submittal of this Work Plan; contact information (addresses, phone numbers, and e-mail) for key project personnel; general responsibilities of project team personnel and/or contractors and subcontractors; qualifications of key project personnel and other personnel as appropriate, and, status of any projected contractor procurements. The Project Management Work Plan should also include a schedule for all Work to be performed under the SOW.

#### Task 2. Remedial Design Work Plan

The Remedial Design is generally defined as those activities to be undertaken to develop the final plans and specifications, general provisions, special requirements, and all other technical and procurement documentation necessary to fully implement the Remedial Action at this Site as described in the ROD and this SOW. All Remedial Design work, including plans and specifications, shall be developed in accordance with EPA's Superfund Remedial Design and Remedial Action guidance and shall demonstrate that the Remedial Action shall meet all objectives of the ROD, CD, and this SOW, including RAOs. Subject to approval by EPA, KPC/L-P may submit more than one set of design submittals reflecting different components of the Remedial Action. Remedial Design work shall be submitted in accordance with the schedule set forth in Section VI below. KPC/L-P shall meet regularly with EPA to discuss design issues.

As background, extensive environmental investigations and some remedial design work have already been performed for the Marine OU pursuant to a 1995 Consent Decree that resolved violations under the Clean Water Act and the Clean Air Act. Pursuant to the 1995 Consent Decree, and after public comment ended on the Proposed Plan for the Marine OU, EPA and KPC

agreed to the early submittal of a Remedial Design Sampling and Analysis Plan (SAP). In late 1999, EPA approved the Remedial Design SAP and determined it to be a component of the "Remediation Work Plan," which is identified as a requirement in Section 5(i) of the 1995 Consent Decree. Subsequently, EPA approved additional Remedial Design work, including:

- Sampling and Analysis Plan (SAP) for Remedial Design Sampling at the Marine Operable Unit of the Ketchikan Pulp Company Site, Ward Cove Sediment Remediation Project (Exponent 1999). The Remedial Design SAP included a field sampling plan, quality assurance project plan, health and safety plan, and standard operating procedures.
- Cruise and Data Report for Remedial Design Sampling at the Marine Operable Unit of the Ketchikan Pulp Company site, Ward Cove Sediment Remediation Project (Exponent and Hartman 2000). The Cruise and Data Report describes results of the Remedial Design sampling effort.

All Remedial Design work approved by EPA under the 1995 Consent Decree is considered approved under this CD. Upon the effective date of the Superfund Consent Decree, any Remedial Design work not previously-approved by EPA will be managed under the Superfund Consent Decree.

Within thirty (30) days after notice of authorization to proceed, KPC/L-P shall submit a Remedial Design Work Plan which shall document the overall management strategy for performing the remedial design and construction of the Remedial Action for EPA to review and approve. The plan shall clearly identify the Remedial Design work that has been previously-approved by EPA, and the Remedial Design work that will be completed under this Consent Decree. The plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation and shall include a description of qualifications of key personnel directing the Remedial Design, including contractor personnel. The Remedial Design Work Plan may be combined with the submittal of the Prefinal Design documentation. The Work Plan shall also contain a schedule of Remedial Design activities.

### Task 3: Remedial Design Phases

KPC/L-P shall prepare construction plans and specifications to implement the Remedial Actions at the Site as described in the ROD and this SOW. KPC/L-P shall meet regularly with EPA throughout the Preliminary (approximately 30%) and Intermediate (approximately 60%) Design Phases, providing to EPA for review and approval those key technical documents (see Section A.2 below) that support the remedial design analysis. Plans and specifications shall be submitted in accordance with the schedule set forth in Section VI below.



A. Prefinal and Final Designs

KPC/L-P shall submit the Prefinal Design when the design effort is 95 percent complete and shall submit the Final Design when the design effort is 100 percent complete. The Prefinal Design may include technical memoranda previously-approved by EPA during Preliminary and Intermediate Design Phases. The Final Design shall fully address all comments made to the Prefinal Design and shall include reproducible drawings and specifications suitable for bid advertisement. The Prefinal Design shall serve as the Final Design if EPA has no further comments and issues the notice to proceed. Prefinal and Final Design will include (unless previously-approved by EPA):

1. Results of the Remedial Design field sampling plan.
2. Prefinal (95%) Design Analysis Report, including the following:
  - a. Design criteria and the basis of design, including:
    - (1) technical parameters and supporting calculations upon which the design will be based, including but not limited to design requirements for each active remedy (e.g., dredging, capping, mounding);
    - (2) appropriate physical and chemical characteristics of materials to be used for sediment capping and mounding;
    - (3) method for identifying and testing clean source material, including acceptance criteria for such sediment;
    - (4) determinations regarding potential propellor-driven erosion for capped and mounded areas;
    - (5) cap and mound placement techniques;
    - (6) determinations on requirements to the contractor of how dredged sediments will be handled, transported, and disposed;
    - (7) design dredge depth and overcut allowances;
    - (8) dredged material volumes;
    - (9) dredging techniques;
    - (10) identification of upland landfill location for disposal of dredged sediments;
    - (11) descriptions of the analyses conducted to select the design approach, including a summary and detailed justification of design assumptions;
    - (12) access and easement requirements;
    - (13) permit requirements or substantive requirements of permits.

3. Prefinal (95%) Construction Documents and Schedule, including:
  - a. Plans/drawings/sketches and required specifications.
  - b. Proposed locations of processes/construction activity.
  - c. Construction schedule, including consideration of scheduling and coordination with Gateway Forest Products, Inc. operations.
  
4. Prefinal (95%) Design Analysis Plans:
  - a. Draft Performance Standard Verification Plan, which shall detail the remediation verification method, including compliance with Applicable or Relevant and Appropriate Requirements (ARARs). The Performance Standard Verification Plan will describe the methods used to measure compliance with measurement quality objectives (such as performance and method requirements), including compliance with sediment amendment volumes per unit area and target dredge depths. Performance monitoring will include characterization of in-place capping materials (e.g., coverage and thickness) through such methods as video surveys, grab samples, digital photographic interpretation, or bathymetric surveys. Performance monitoring will also be performed to confirm that requirements have been met for dredge operation Best Management Practices, transportation of dredged material to a suitable upland disposal site, removal of logs prior to dredging, and proper sequencing of capping, mounding, and dredging.
  - b. Draft Construction Quality Assurance Plan (CQAP; see Section V of this SOW), which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official, independent of the supervising contractor, to conduct a quality assurance program during the construction phase of the project. The purpose of the CQAP is to ensure that the appropriate methods and operational controls will be implemented and achieved, as defined in the plans, specifications, and substantive requirements of permits.
  - c. Draft Water Quality Monitoring Plan and its associated Quality Assurance Project Plan and Health and Safety Plan (see Section V of this SOW), which shall detail water quality monitoring to confirm that water quality standards, as defined by substantive

requirements of 401 water quality certification for compliance with the requirements in Section 404(b)(1) guidelines, are met (or approval to allow temporary exceedances of WQS has been received) during capping and dredging operations and where return-water from barges or de-watering (as appropriate) may affect the water column. The plan shall describe the specific water quality monitoring requirements (schedule, sampling locations and intervals, sampling parameters, analytical methods), key contacts, reporting requirements (including daily reports, daily contacts for notifications of all exceedances, result summaries, draft and final reports, and final costs), overall project schedule, a health and safety plan, and a quality assurance project plan.

5. The 100 % Final Design submittal shall include the final Design Analysis Report; final construction documents and schedule, including final plans and specifications; final Design Analysis Plans; final cost estimate for Remedial Action (+15 percent and -10 percent accuracy) and estimated cost for long-term monitoring; and, a schedule for the construction and implementation of the Remedial Action that identifies major milestones.

#### Task 4. Remedial Action Work Plan

KPC/L-P shall submit their own or their contractor's Remedial Action Work Plan which includes a detailed description of the remediation and construction activities. The Remedial Action Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the Remedial Action. KPC/L-P shall submit a Remedial Action Work Plan in accordance with this SOW and Paragraph 26 of the Consent Decree.

- A. The Remedial Action Work Plan shall include the following information:
  1. the schedule of activities for completion of the Remedial Action, including those inspections, meetings, and documents referenced in Task 5 of this SOW;
  2. method for selection of the contractor;
  3. schedule for developing and submitting other required Remedial Action plans;
  4. methodology for implementation of the Construction Quality Assurance Plan;
  5. methods for satisfying permitting requirements or substantive aspects of permitting requirements;
  6. methodology for implementation of the Monitoring Plan;
  7. formulation of the Remedial Action team;

8. accident prevention plan;
9. construction quality control plan and statement of qualifications (by constructor);
10. stormwater pollution prevention plan;
11. spill prevention and emergency response plan;
12. materials handling plan;
13. procedures and plans for the decontamination of equipment and the disposal of contaminated materials, as appropriate.

The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of KPC/L-P'S Remedial Action Project Team (including, but not limited to, the Supervising Contractor) for the Marine OU.

#### Task 5. Remedial Action Construction

KPC/L-P shall implement the Remedial Action as detailed in the approved Final Design. The following activities shall be completed in constructing the Remedial Action. All inspections and meetings shall be documented by a designated person and minutes shall be transmitted to all parties within seven (7) working days of the inspection/meeting.

##### A. Preconstruction inspection and meeting:

KPC/L-P shall participate with EPA in a preconstruction inspection and meeting to:

1. review methods for documenting and reporting inspection data, and compliance with specifications and plans;
2. review methods for distributing and storing documents and reports;
3. review work area security and safety protocols;
4. demonstrate that construction management is in place, and discuss any appropriate modifications of the construction quality assurance plan (CQAP) to ensure that site-specific considerations are addressed;
5. conduct a Site walk-about to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

##### B. Notification requirement for dredged areas:

Prior to capping any area that has been dredged, KPC/L-P shall demonstrate that dredging is completed in accordance with the requirements in the ROD. Capping of dredged areas shall not be initiated without EPA's approval.

C. Prefinal construction inspection/meeting:

Within thirty (30) days after KPC/L-P make preliminary determinations that in-water (i.e., capping, mounding, and dredging) remedial action construction is complete, KPC/L-P shall notify EPA for the purposes of conducting a prefinal inspection/meeting. The prefinal construction inspection/meeting is to determine whether the project is complete and consistent with the contract documents and the Remedial Action Work Plan, to review compliance with the CQAP, and to review field changes and change orders. Within seven (7) days of the inspection/meeting, a prefinal construction inspection/meeting letter shall be submitted to EPA. The prefinal construction inspection/meeting letter shall include minutes from the inspection/meeting and shall outline the outstanding construction items, actions required to resolve items, completion dates for these items, a summary of the Daily Quality Control Reports (which details remediation progress) provided to KPC/L-P by the contractor performing the remedial action, and a proposed date for final construction inspection/meeting. The completion dates for the items identified in the minutes as work to be completed shall be within thirty (30) days of the prefinal construction inspection/meeting, unless otherwise agreed to by EPA.

D. Final construction inspection/meeting:

Within thirty (30) days after completion of work identified in the prefinal construction inspection/meeting letter, KPC/L-P shall notify EPA for the purposes of conducting a final inspection/meeting regarding completion of in-water remedial action construction. The prefinal inspection/meeting letter shall be used as a checklist with the final inspection/meeting focusing on the outstanding Remedial Action construction items identified in the prefinal inspection/meeting. Confirmation shall be made that outstanding Remedial Action construction items have been resolved. Within thirty (30) days after completion of the de-watering of dredged sediments and the placement of dredged sediments in an approved upland landfill, KPC/L-P shall submit to EPA an addendum to the final construction inspection/meeting letter that provides information regarding completion of the Remedial Action construction items that addressed de-watering and disposal of dredged sediments.

E. Reports

1. Final Construction Report

Within forty-five (45) days of a successful final construction inspection/meeting regarding completion of in-water remedial action construction, KPC/L-P shall submit a draft Final Construction Report. A final Final Construction Report shall be submitted within thirty (30) days of KPC/L-P's receipt of EPA comments on the draft report. The Final Construction Report shall summarize all construction

work that has been completed, including any modifications to the approved Remedial Design that were made during the Remedial Action and a discussion of the basis for those modifications. In the report, a professional engineer registered in Alaska shall certify that the construction phase of the Remedial Action has been constructed in accordance with the design and specifications. The written report shall include as-built drawings of the entire Marine OU signed and stamped by the professional engineer. The KPC/L-P Project Coordinator shall certify that the construction phase of the Remedial Action has been constructed in accordance with the Remedial Action Work Plan, and the report shall contain the following statement, signed by a responsible corporate official of KPC/L-P or KPC/L-P's Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Within thirty (30) days after completion of the addendum to the final construction inspection/meeting letter that addresses de-watering of and disposal of dredged sediments, KPC/L-P shall submit to EPA an addendum to the final construction report that summarizes all construction work completed with regards to the de-watering and disposal of dredged sediments, including any modifications to the approved Remedial Design that were made during the Remedial Action and a discussion of the basis for those modifications. In the addendum to the report, a professional engineer registered in Alaska shall certify that the construction phase of this aspect of the Remedial Action has been constructed in accordance with the design and specifications. The KPC/L-P Project Coordinator shall certify that the construction phase of this aspect of the Remedial Action has been constructed in accordance with the Remedial Action Work Plan, and the addendum to the report shall contain the following statement, signed by a responsible corporate official of KPC/L-P or KPC/L-P's Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

## 2. Final Remedial Action Report

Within ninety (90) days after KPC/L-P conclude that the Remedial Action for the Marine OU has been fully performed and the Remedial Action Objectives have been attained, KPC/L-P shall schedule and conduct a pre-certification inspection/meeting to be attended by EPA. If, after the pre-certification inspection/meeting, KPC/L-P still believe that the Remedial Action has been fully performed and the Remedial Action Objectives have been attained, they shall submit within thirty (30) days of the inspection/meeting a written draft Final Remedial Action Report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI of this Consent Decree. The Remedial Action Report shall document the remediation activities performed for the Marine OU and a demonstration that performance standards have been achieved in accordance with the Performance Standards Verification Plan. The report shall summarize historical remedial action information (including reference to the Final Construction Report and Addendum), results of long-term monitoring, and other information to show that the Remedial Action has met the Remedial Action Objectives identified in the ROD and this Consent Decree and SOW. A final Final Remedial Action Report shall be submitted to EPA within thirty (30) days of KPC/L-P's receipt of EPA's comments.

In the Final Remedial Action Report, KPC/L-P's Project Coordinator shall state that the Remedial Action has been completed and the Remedial Action Objectives have been attained in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of KPC/L-P or KPC/L-P's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

### Task 6. Monitoring and Reporting Work Plan

KPC/L-P will prepare a post-Remedial Action Monitoring and Reporting Work Plan (Monitoring Plan) to address the long-term monitoring of the Remedial Action. This plan will include requirements for long-term monitoring of surface sediments in both capped/mounded areas and natural recovery areas; requirements, including biological standards, for evaluating the effectiveness of the Remedial Action; sampling and laboratory testing and analyses; quality assurance/quality control procedures; a schedule; documentation and reporting; and other actions necessary for the proper long-term monitoring of the Remedial Action in the AOC.

EPA will determine the number and timing of post-remediation monitoring events: a monitoring interval of 2 or 3 years is anticipated. EPA will require monitoring of sediment toxicity and benthic infaunal community structure to measure progress towards achieving RAOs. Sediment toxicity data will be analyzed consistent with the methods used in the RI/FS. The condition of the benthic community will be analyzed using methods that will include, but will not necessarily be limited to, comparisons to areas that are considered to be relatively unimpacted areas of similar habitat (e.g., reference areas or areas of Ward Cove outside of the AOC that are of similar habitat), as well as spatial and temporal comparisons of community structure within the AOC. Spatial and temporal evaluations of benthic community structure will be evaluated through a comparison of successive sets of post-remediation monitoring data to one another, rather than comparison of monitoring data to the pre-remediation condition. Benthic community indices will include taxa richness and abundance as well as other relevant indices. EPA will require monitoring of ammonia and 4-methylphenol in surface sediments to assist in interpretation of biological monitoring data. EPA does not intend to require bulk sediment analysis of sulfide because dissolved sulfide, the most likely candidate for causative agent, cannot be adequately characterized by bulk chemistry measurements of sulfide. EPA does not intend to require long-term monitoring of surface sediments within the maintenance dredging area and the very-high density areas of sunken logs.

EPA intends to evaluate the results of all monitoring data following each monitoring event to determine whether consistent and acceptable progress is being made toward achieving RAOs in surface sediments in the capped/mounded areas and in natural recovery areas. EPA will use a weight-of-evidence approach to interpret monitoring data and determine whether acceptable progress is being made towards achieving RAOs.

A draft Monitoring Plan will be submitted prior to the pre-final construction inspection, in accordance with the approved construction schedule. The final Monitoring Plan shall address all comments made to the draft Monitoring Plan and will be subject to EPA approval. After results for each monitoring event are reported, the final Monitoring Plan will be reviewed and revised, as necessary, under EPA direction and approval.

- A. The Monitoring Plan shall be composed of the following:
  1. Monitoring objectives;
  2. Description and schedule for monitoring and laboratory testing requirements:
    - a. description of monitoring tasks;
    - b. description of required data collection (including type, number, location and frequency of sampling), data tracking and reporting, and their interpretation;
    - c. sampling and analysis plan, including a field sampling plan, quality assurance project plan, and health and safety plan;



- d. schedule for monitoring frequency and reporting results.
3. Identification of biological standards that will be used to evaluate monitoring data and to measure progress towards achieving the RAOs. Biological standards will evaluate the protectiveness of the Remedial Action, specifically whether the RAOs are being achieved. Biological standards may be measured by biological tests, such as sediment toxicity tests or analyses of the type and abundance of benthic communities. Physical and chemical conditions may be used to support the evaluations of sediment toxicity and benthic community structure. Any reference stations selected for the purpose of comparisons to on-Site biological tests will be determined in accordance with the Monitoring Plan.
4. Description of a process to notify EPA of possible additional responses if the Remedial Action does not achieve Remedial Action Objectives within an adequate time period. If adequate progress is not being made toward achieving RAOs, or if the remedy is otherwise not protective of the environment, a variety of responses may be appropriate. Possible responses include (but are not limited to) performing additional remedial actions, collecting additional data to determine the cause of the failure to recover, establishing institutional controls on activities in the AOC, and extending the period for completion of recovery. If further action is determined by EPA to be necessary to be protective of the environment, the appropriate type of action will be determined based on the nature and severity of the failure of recovery of the benthic community, and an analysis of alternatives. EPA shall determine whether additional response actions will be conducted, and if additional work is determined to be necessary, such work shall not be implemented without prior approval of EPA.
5. Records and reporting mechanisms required:
  - a. records for long-term monitoring costs;
  - b. reporting mechanisms, including submittal of monitoring information to support the EPA's five-year review process.
6. Procedures for petitioning EPA to reduce the frequency of or discontinue monitoring.
7. Description of a process to define monitoring tasks and data collection necessary for addressing circumstances that are deemed to violate the institutional control identified for the Marine OU.

## **V. CONTENT OF SUPPORTING PLANS**

The documents listed in this section--the Quality Assurance Project Plan, the Health and Safety Plan, and the Construction Quality Assurance Plan--are documents which must be prepared and submitted as outlined in this SOW. The following section describes the required contents of each of these supporting plans.

### **Quality Assurance Project Plan**

KPC/L-P shall develop Site-specific Quality Assurance Project Plans (QAPPs) for sample analysis and data handling for any samples collected as part of future Site work, based upon the Consent Decree and guidance provided by EPA. The QAPP(s) shall be consistent with the requirements of the EPA Contract Lab Program (CLP) for laboratories proposed outside the CLP. The QAPP shall, at a minimum, include:

#### **Project Description**

- Facility Location History
- Past Data Collection Activity
- Project Scope
- Sample Network Design
- Parameters to be Tested and Frequency
- Project Schedule

#### **Project Organization and Responsibility**

#### **Quality Assurance Objective for Measurement Data**

- Level of Quality Control Effort
- Accuracy, Precision, and Sensitivity of Analysis
- Completeness, Representativeness, and Comparability

#### **Sampling Procedures**

#### **Sample Custody**

- Field Specific Custody Procedures
- Laboratory Chain-of-Custody Procedures

#### **Calibration Procedures and Frequency**

- Field Instruments/Equipment
- Laboratory Instruments

#### **Analytical Procedures**

- Non-Contract Laboratory Program Analytical Methods
- Field Screening and Analytical Protocol
- Laboratory Procedures

#### Internal Quality Control Checks

- Field Measurements
- Laboratory Analysis

#### Data Reduction, Validation, and Reporting

- Data Reduction
- Data Validation
- Data Reporting

#### Performance and System Audits

- Internal Audits of Field Activity
- Internal Laboratory Audit
- External Field Audit
- External Laboratory Audit

#### Preventive Maintenance

- Routine Preventive Maintenance Procedures and Schedules
- Field Instruments/Equipment
- Laboratory Instruments

#### Specific Routine Procedures to Assess Data Precision, Accuracy, and Completeness

- Field Measurement Data
- Laboratory Data

#### Corrective Action

- Sample Collection/Field Measurement
- Laboratory Analysis

#### Quality Assurance Reports to Management

KPC/L-P shall submit a draft QAPP to EPA for review and approval. Final QAPPs shall be revised in response to EPA comments.

## **Health and Safety Plan**

For implementation of Remedial Action, KPC/L-P shall develop a health and safety plan that is designed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by this Remedial Action. The safety plan shall develop the performance levels and criteria necessary to address the following areas.

- Facility Description
- Personnel
- Levels of protection
- Safe work practices and safe guards
- Medical surveillance
- Personal and environmental air monitoring
- Personal protective equipment
- Personal Hygiene
- Decontamination--personal and equipment
- Site work zones
- Contaminant control
- Contingency and emergency planning
  - include a Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), as specified in 40 C.F.R. Part 109
- Logs, reports, and record keeping

The safety plan shall follow EPA guidance and all OSHA requirements as outlined in 29 C.F.R. 1910 and 1926.

## **Construction Quality Assurance Plan**

As described above, KPC/L-P shall submit a Construction Quality Assurance Plan (CQAP) that describes the Site-specific components of the quality assurance program that shall ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The draft CQAP shall be submitted with the prefinal design and the final CQAP shall be submitted with the final design. The final CQAP shall be submitted prior to the start of construction in accordance with the approved construction schedule. The CQAP shall provide requirements for the following elements:

- A. Responsibility and authority of all organization and key personnel involved in the Remedial Action construction, including EPA and other agencies.
- B. Qualifications of the Construction Quality Assurance (CQA) Officer. Establish the minimum qualifications of the CQA Officer and supporting inspection personnel.

- C. Inspection activities. Establish the observations and tests that will be required to monitor the construction and/or installation of the components of the Remedial Action. The plan shall include the scope and frequency of each type of inspection to be conducted. Inspections shall be required to verify compliance with environmental requirements and ensure compliance with all health and safety procedures.
- D. Sampling activities. Establish requirements for quality assurance sampling activities, such as sampling protocols, sample size, sample locations, frequency of testing, criteria for acceptance and rejection, and plans for correcting problems as addressed in the project specifications. A description of the provisions for final storage of all records consistent with the requirements of the Consent Decree shall be included.
- E. Documentation. Establish the reporting requirements for CQA activities. This shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall be presented in the CQA plan.

## VI. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

The schedule for submission of major deliverables to EPA is described below. If the date for submission of any item or notification required by this SOW occurs on a weekend or state or federal holiday, the date for submission of that item or notification is extended to the next working day following the weekend or holiday.

<u>Submission</u>	<u>Due Date</u>
Project Management Work Plan	Within thirty (30) days after notice of authorization to proceed pursuant to Paragraph 24 of Consent Decree
Remedial Design Work Plan	Within thirty (30) days after notice of authorization to proceed pursuant to Paragraph 24 of Consent Decree
Prefinal Remedial Design (95 percent) Design Analysis Report	Within forty-five (45) days after notice of authorization to proceed pursuant to Paragraph 24 of Consent Decree
Prefinal Remedial Design (95 percent)	Within sixty (60) days after notice of authorization to proceed pursuant to Paragraph 24 of Consent Decree
Final Remedial Design (100 percent)	Thirty (30) days after receipt of EPA's comments on the Prefinal Design
Notification for Remedial Action Start	Provide notification to EPA forty-five (45) days prior to initiation of fieldwork to allow EPA to coordinate field oversight activities
Remedial Action Work Plan	Within forty-five (45) days after approval of the Final Remedial Design submittal
Award Remedial Action Construction Contractor(s)	Within thirty (30) days after approval of the Final Remedial Design submittal
Pre-Construction Inspection and Meeting	Within thirty (30) days after EPA approval of Remedial Action Work Plan

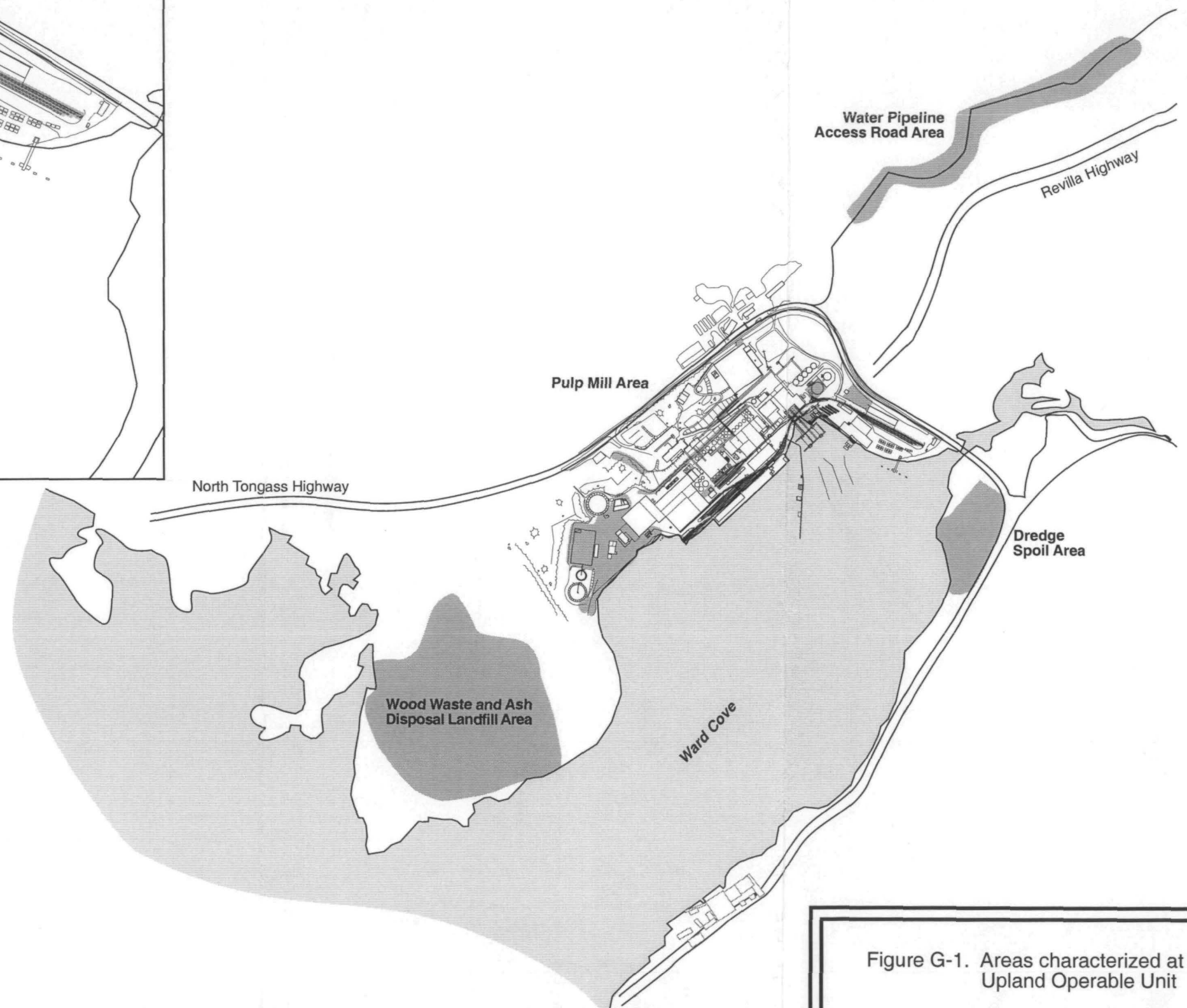
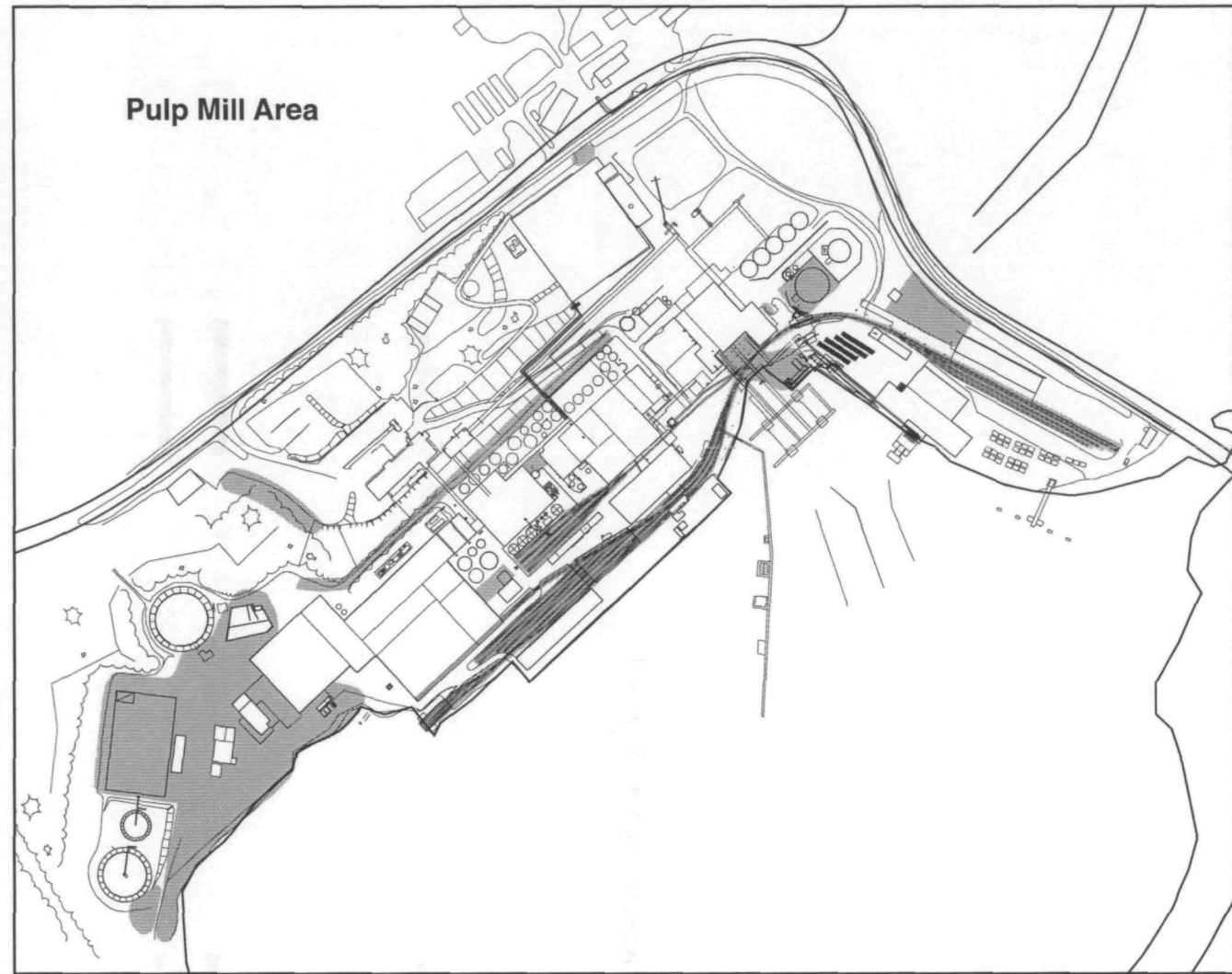
Initiate Construction of Remedial Action	Within thirty (30) days after approval of the Remedial Action Work Plan, consistent with environmental windows for in-water work. EPA shall not approve the RA Work Plan until the Consent Decree has been entered.
Completion of Construction	Within 18 months after receipt of EPA's authorization to proceed with RA or as approved by EPA in RA construction schedule
Prefinal Construction Inspection/Meeting	No later than thirty (30) days after completion of construction
Prefinal Construction Inspection/Meeting Letter	Within seven (7) days after the prefinal construction inspection/meeting
Final Construction Inspection/Meeting	Within thirty (30) days after completion of work identified in prefinal construction inspection/meeting letter
Monitoring and Reporting Work Plan	No later than Prefinal Construction Inspection/Meeting
Final Construction Report	Within forty-five (45) days after final construction inspection/meeting
Pre-certification Inspection/Meeting	Within ninety (90) days after Remedial Action has been fully performed and the Remedial Action Objective have been obtained
Final Remedial Action Report	Within thirty (30) days after pre-certification inspection/meeting

RD Notice of Authorization to Proceed--see Paragraph 24 of the Consent Decree. The trigger is: Within ten (10) days of lodging, KPC/L-P provides the name of the contractor to EPA. EPA either disapproves or issues a Notice of Authorization to Proceed.

**APPENDIX G**







**LEGEND**

■ Areas characterized

Note: Does not include offsite areas that were characterized as a result of either aerial deposition, or the use of grit or dredge spoil material from the former pulp mill.



0 1/4 1/2 miles

0 1/2 1 kilometers

Figure G-1. Areas characterized at KPC Upland Operable Unit

**APPENDIX H**

Appendix H to KPC Consent Decree (draft)

Draft- (November 18, 1999)

EQUITABLE SERVITUDE [AND EASEMENT] [AND RIGHT OF ENTRY]  
[AS 34.17.010 - AS 34.17.060]

This Equitable Servitude [and Easement][and Right of Entry] (hereinafter "Instrument") is made between \_\_\_\_\_, by [Name(s) and Addresses(s) of any entities with an existing fee interest in the subject property], as grantors (hereinafter, with [its] successors and assigns, "Grantor[s]"), and the State of Alaska (whose address is State of Alaska, Department of Natural Resources, Division of Mining, Lands, and Water Realty Services Section, 3601 "C" Street, Suite 960, Anchorage, Alaska 99503), as grantee (hereinafter, with its assigns, "Grantee"), for good and valuable consideration.

WHEREAS, Grantor is the [owner of] certain real property subject to this Instrument (hereinafter the "Property") [if there is more than one Grantor, identify each Grantor and identify interest in the property] which is more particularly described below:

[Legal description: the responsible person must pay for an Attorney (or "Pre-Litigation") Title Search from a title company, which should contain a legal description. NOTE: the title company merely supplies a description derived from the title record, which is not necessarily the definitive legal description.]

WHEREAS, the Property was subject to a release of oil or another hazardous substance regulated under [18 AAC 75 or 18 AAC 78] and [a risk-based cleanup level and site closure/a soil and/or groundwater cleanup level determination under 18 AAC (check exact section and add date of current regulation) that is less stringent than a residential cleanup level, or a determination under 18 AAC 75.350 (date) that groundwater is not a current or potential future drinking water source].

WHEREAS, in lieu of a more comprehensive cleanup, the Alaska Department of Environmental Conservation has determined, and Grantor has agreed that, the recording of this Instrument is necessary as an institutional control as part of [name and date of spill plan/report, UST #] and 18 AAC [check exact section and add date of current regulation]; [may also add additional paragraphs giving background: when Property was contaminated and with what, info re DEC's evaluation, assumptions and risk-level established]; and

WHEREAS, the requirements, rights, covenants, conditions, prohibitions and restrictions of this Instrument (hereinafter "Provisions") are intended to protect human health, safety, and welfare and the environment [and maintain (and/or enhance) water quality (conservation easement statutory lang.)].

NOW, THEREFORE, pursuant to the laws of Alaska, [including AS 34.17.010 - AS 34.17.060 and the common law,] Grantor does hereby grant and convey to Grantee

forever, with warranties of title, subject to conditions, restrictions and limitations of record, an equitable servitude [and easement ][and right of entry] over the Property of the nature and character and to the extent set forth below.

### **1. Prohibited Activities:**

Unless otherwise specifically authorized in writing by the Alaska Department of Environmental Conservation or its successor in administrative function or assigns (hereinafter, "ADEC"), the activities listed below are prohibited.

#### **SAMPLE LANGUAGE:**

a. Any action at or use of the Property, including, without limitation, subsurface utility repairs, construction or excavation activities, that interferes with or impairs the integrity of, or is reasonably likely to interfere with, or impair the integrity of [result in the creation of additional exposure pathways that increase the risk to human health, safety or welfare or to the environment ][groundwater monitoring wells or other . . .][structures, systems, procedures or devices constructed or implemented at the Property, except that in case of an emergency requiring an immediate response, necessary action may begin immediately on the condition that ADEC is notified by Grantor in writing within \_\_\_\_\_ hours . . . [and necessary steps are undertaken by Grantor within \_\_\_\_\_ days to reestablish ADEC approved (groundwater wells, systems, procedures, devices . . . constructed or implemented at the Property.)] [including but not limited to excavation, drilling, scraping, flooding or erosion . . .][NOTE: that unless all easement holders, such as underground utilities, agree to this document, they will not be subject to this limitation.]

b. Any use of groundwater at the Property, by extraction through wells or other means, which use involves consumption or other beneficial use of groundwater. [This prohibition shall not apply to the extraction of groundwater associated with temporary dewatering activities related to construction development, or the installation of sewer or utilities at the Property. . . .] [dewatering would likely not be considered a beneficial use of the groundwater; may need to specifically address dewatering and the need to properly manage and discharge the wastewater (if a type of groundwater use is allowed, reconcile with broad prohibitions above)].

c. The following operations and uses:

1. residential use of any type [definition? For example, the definition found in 18 AAC 75.990.]

2. agricultural use of any type [definition?]

d. [Constructing a new structure with a basement.]

e. [Soil excavation within the area where (residual soil contamination exists or where wastes are capped and left in place) as shown in the attached site (diagram/survey)].

f. Soil excavation or movement of soil off-site, as required by 18 AAC

75.325(i)(1) and (2) [add date of latest reg revision].

g. [Flooding the property by water diversion or snow stockpiles which saturate the soils and result in upward migration of pollution.]

## **2. Required Activities**

Unless otherwise specifically authorized in writing by ADEC, the activities listed below are required.

a. Grantor shall install and maintain [the applicable engineering controls, such as a cap, as described by an attached agreement (i.e., a cleanup, monitoring and/or maintenance plan).]

## **3. Right of Entry**

During reasonable hours, after reasonable notice and subject to reasonable security requirements, ADEC and its Agents shall have the right to enter in, on, upon, over and across any portion of the Property to determine whether the Provisions herein have been or are being complied with. Violation of, or reasonable suspicion of the violation of, any of the Provisions herein, shall give ADEC and its Agents the right, privilege, and license to enter in, on, upon, over, and across any portion of the Property and to investigate, abate, mitigate or cure such violation, at the expense of Grantor, provided written notice of the violation is given to Grantor, describing what activity is necessary to investigate or correct the violation and Grantor fails to cure the violation within a time specified in such notice. Such activities include but are not limited to the right to store, move, and remove equipment and supplies; construct, operate, maintain, alter, repair and remove devices for the monitoring, containment and treatment of contamination in soil, air and water; investigate and collect samples; excavate and remove waste, pollutants, hazardous substances, contaminated soils, contaminated waste; deposit uncontaminated soil; and the performance of any other activity which may be reasonably necessary and incident to ADEC's investigation and response. Any such entry by ADEC or its Agents shall not be deemed a trespass or any other wrongful entry or remaining on the Property, and Grantee shall not be subject to liability to Grantor for such entry or any action taken to investigate, abate, mitigate or cure a violation. ADEC and its Agents shall be considered invitees on the property and the Grantor shall make every reasonable effort to inform ADEC and its Agents of hazards or hazardous areas to prevent personal injury.

## **4. General Provisions:**

a. This Instrument is for the benefit of Grantee and conveys the perpetual right to Grantee, acting through ADEC and contractors, employees, agents and authorized representatives acting on ADEC's behalf (herein, "Agents"), to enforce and implement the Provisions herein. Nothing herein shall be deemed to create in any third party the right to enforce this Instrument.

b. All real estate, lots, parcels, or portions thereof located within or on the Property, and any lease, conveyance, or transfer covering or describing any part thereof or interest therein, shall be subject to the Provisions herein. By acceptance of such conveyance or transfer, each lessee, transferee or grantee and each of their heirs, successors, transferees or assigns agrees with Grantor and each other to be bound by the Provisions herein.

c. Nothing in this Instrument shall be construed as preventing Grantor from [i.e., properly maintaining or repairing any existing or future monitoring wells, engineering controls or cleanup equipment that is specifically authorized in writing by ADEC . . .]

d. The Provisions herein shall run with the land in perpetuity and shall be binding upon Grantor.

e. Nothing in this Instrument shall relieve Grantor from liability for injuries occurring on, or resulting from [his/her/their] activities on the Property, for which Grantor would otherwise ordinarily be liable. Grantor shall be liable for and shall indemnify and hold Grantee harmless from liability for injuries and damage which arise because of its status as Grantee. Grantor shall also indemnify Grantee for all costs, including attorneys' fees, which arise from its status as Grantee.

f. Grantor hereby covenants to and with Grantee that Grantor is lawfully seized of the surface estate [,in fee simple,] of the Property, has good and lawful right and power to sell and convey the same, that the same is free and clear of encumbrances, except as specified herein and as of record, and that Grantor will forever warrant and defend the equitable servitude [and easement][and right of entry] conveyed to Grantee by this Instrument against the claims and demands of all persons.

g. To the maximum extent permitted by law, the Provisions herein shall not be subject to waiver or abandonment due to non-enforcement or violation of this Instrument or any of the Provisions herein on all or any portion of the Property. No waiver of the breach of any of the Provisions herein shall constitute a waiver of a subsequent breach of the same Provision or any other Provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Instrument nor for imposing any Provision which may be unenforceable.

h. This Instrument may be enforced by Grantors or Grantee in a court of law. The interpretation and performance of this Instrument shall be governed by the laws of Alaska.

i. Upon violation of any of the Provisions herein, Grantee may seek any available legal or equitable remedy to enforce this Instrument and shall be entitled to recover damages for violations of the Provisions herein to the public or to the environment protected herein under applicable federal or state law.

j. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give another shall be in writing and shall either be served

personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

[Name and Address]

To Grantee:

Director, Division of Mining, Land and Water  
Realty Services Section  
Dept. of Natural Resources  
3601 "C" Street, Suite 960  
Anchorage, Alaska 99503

With a copy to:

[ADEC Contact Person  
Alaska Department of Environmental Conservation  
Appropriate office address]

k. The determination that any Provision herein, or its application to any person or circumstance, is invalid shall not affect any other Provision herein or its application and the other Provisions herein shall remain in full force and effect.

l. Any general rule of construction to the contrary notwithstanding, this Instrument shall be construed so as to effect the purpose for which it was granted to Grantee. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Instrument.

m. Grantor shall notify ADEC at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Grantor's interest in the Property. Grantor shall include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: The interest conveyed hereby is subject to an Equitable Servitude [and Easement][and Right of Entry] dated \_\_\_\_\_, 19\_\_\_\_, recorded in the public land records on \_\_\_\_\_, 19\_\_\_\_, in book \_\_\_\_\_, page \_\_\_\_\_, of the \_\_\_\_\_ Recording District [(s) repeat as necessary], Alaska, in favor of, and enforceable by, the State of Alaska.

n. Grantor shall notify ADEC within ten (10) days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property under \_\_\_\_\_ zoning code or any successor code.

#### IV. Termination







\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)

Notary Public in and for the State of

\_\_\_\_\_  
residing at

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

(SEAL)

**CERTIFICATE OF SECRETARY OF \_\_\_\_\_ CORPORATION**  
(Example for Corporate Grantor Acknowledgment)

I, the undersigned, to hereby certify the following:

1. I am now the duly elected, qualified and acting Secretary of the \_\_\_\_\_ Corporation [brief mention of what laws the corp. exists and is organized under].

2. Attached as Exhibit \_\_\_\_\_ are true and correct copies of (i) the Articles of Incorporation of the \_\_\_\_\_ Corporation, which were filed with the State of Alaska on [date]; (ii) [list any amendments to or restated articles and filing date]. [Review articles which are in ]full force and effect as of the date of this Certificate of Secretary and have not been revoked, modified, altered, or amended in any way.

3. Attached as Exhibit \_\_\_\_\_ is a true and correct copy of [any board and/or shareholder resolution or other authorizing mechanisms for the conveyance at issue in this Instrument; the approval percentage and existence of a quorum].

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of the \_\_\_\_\_ Corporation this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[Name], Secretary

\_\_\_\_\_  
Corporation

[SEAL]

Confirmed and approved;

[Name], President  
\_\_\_\_\_ Corporation

### ACCEPTANCE

Pursuant to AS 38.05.035(a)(12), [check exact section and add date of statute] the State of Alaska hereby accepts this **EQUITABLE SERVITUDE [AND EASEMENT][AND RIGHT OF ENTRY]** conveying to the State of Alaska, its successors in administrative function and assigns, the interests in the Property described therein as an Institutional Control, pursuant to 18 AAC \_\_\_\_\_ and 18 AAC \_\_\_\_\_, [add exact section and date of regulation] to be managed and enforced by ADEC pursuant to a Management Right Assignment between ADEC and the Alaska Department of Natural Resources, to protect human health, safety, and welfare, and the environment [and to enhance or maintain water quality (conservation easement language)].

### STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES

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

\_\_\_\_\_  
Director  
Division of Mining, Land and Water

#### Location Index:

\_\_\_\_\_, Section \_\_\_\_\_,  
Township \_\_\_\_\_, Range \_\_\_\_\_,  
Seward Meridian, Alaska

**NO CHARGE- STATE BUSINESS  
AFTER RECORDING RETURN TO:**  
[Assigned DOL Attorney]  
State of Alaska  
Department of Law  
Environmental Section  
1031 Fourth Ave., Suite 200  
Anchorage, AK 99501

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