




## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

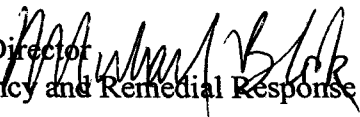
OCT 22 2002

**MEMORANDUM**

**SUBJECT:** Request for a Ceiling Increase and Exemption from Statutory Limits at the Webster-Gulf Nuclear Site, Webster, Harris County, Texas

**FROM:** Myron O. Knudson, P.E., Director  
Superfund Division (6SF) 

**TO:** Marianne I. Horinko, Assistant Administrator  
Office of Solid Waste and Emergency Response (5101T)

**THRU:** Michael B. Cook, Director  
Office and Emergency and Remedial Response (5201G) 

**ATTN:** JoAnn Griffith, Director  
Region 2/6 Accelerated Response Center (5202G)

**I. PURPOSE**

This memorandum requests approval for a ceiling increase for a removal action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9601 et seq., at the Webster-Gulf Nuclear Site (Site) located in Webster, Harris County, Texas. The response action involves the removal and proper disposal of the radioactive sources and contaminated wastes at the Site, disassembly and disposal of the contaminated buildings and foundations, and excavation and disposal of radioactive and contaminated items buried under the Site.

This action meets the criteria for initiating a removal action under the National Contingency Plan (NCP), 40 CFR §300.415.

**II. SITE CONDITIONS AND BACKGROUND**

CERCLIS # TX0000605420  
Category of removal: Classic Emergency  
Site ID # 06MD

919733



## A. Site Description

### 1. Removal site evaluation

The Webster Site is located in Harris County, Texas. At the Webster Site are numerous radioactive sources and radioactive-contaminated wastes, materials, and structures. Machining of radioactive sources, spills, and other releases during operations at the Site contaminated the structures and equipment. The radiation level in the structures has resulted in their being defined as a High Radiation Area, and therefore time and shielding precautions must be observed. Several radioactive isotopes have been identified throughout the facility.

The meters and monitors have detected elevated radiation beyond the perimeter of the Webster Site. This is from the “shine” from the gamma radioactive sources within the building. The level of radiation at the perimeter is high enough to be of concern to the Texas Department of Health, Bureau of Radiation Control (TDH-BRC).

The operations of Gulf Nuclear are described in the Action Memorandum for the Site dated August 28, 2002. The Site investigation and ongoing removal action have shown that radioactive contamination is on the building walls and floors at the Webster Site. The construction of the building and type of contamination do not allow for effective and efficient decontamination of the structure, and experience at the Gulf Nuclear site in Odessa, Texas, has shown that building decontamination is not realistic. However, portions of the structures are not contaminated, or contaminated below levels of concern.

It has been impossible to determine the amount of contamination under the slab and foundation of the building. The building is actually five conjoined buildings, built at different times during the history of Gulf Nuclear’s operations. Documents recovered from the building indicate that the operators poured a concrete slab to cover a spill of radioactive material. Anecdotes from former workers, competitors, and industry workers suggest that Gulf Nuclear buried radioactive sources or items under the foundations as they built the next section of building.

There are currently twenty-five in-ground vaults that were used to store radioactive sources. Investigations during the removal action have found that the walls of some of the vaults are broken, and there is communication with the ground water. Samples of water flowing into the vaults show no elevated radioactive contamination, but this does not eliminate the potential for subsurface contamination. In addition to the twenty-five vaults, there is evidence of up to ten more vaults; areas of concrete were poured in the same sizes as the areas surrounding the existing vaults. Until the foundation can be removed, it cannot be determined if these additional vaults exist, were removed, or were abandoned with radioactive material inside.

### 2. Physical location

The Site is located at 202 W. Medical Center Boulevard in Webster. The immediate area is a medical center with clinics, offices, and a hospital. To the east is a breast cancer diagnostic

clinic separated by only a sidewalk. To the west is a medical office building and then the Clear Lake Regional Hospital. The front door opens onto Medical Center Boulevard to the south. Parking lots for the clinic and doctors' offices surround three sides. A dog kennel is located to the north, separated by a parking lot of two rows of parking and the driveway. Retail stores, other commercial buildings, and ball fields are nearby in the busy urban area of the immediate vicinity. New housing construction has started in the empty field across Medical Center Boulevard.

### 3. Site characteristics

The Webster Site has a series of structures that are connected or abutted on a plat of approximately 300 feet by 85 feet. Materials of construction include brick, prefab metal, and wood siding. The conjoined building sits on concrete slabs poured at different times during the operations.

An investigation conducted by U.S. Ecology in September 2001 found significant radioactive contamination on walls and floors in several rooms. The contamination was not limited to the radiation containment areas, as the investigation found Alpha contamination 120 times greater than background at the opening of the front door. Dust and dirt in the office area had readings of 650 times that of background.

While Gulf Nuclear was operating, a significant release occurred involving a metal lathe. Americium-241 was spewed throughout the room. Fabric, which was designed and used to prevent the contamination of structures, was placed on floor, walls and ceiling of the room. When the fabric was pulled back, the detectors measured the degradation at approximately 200,000,000 cpm on the floor. Every room located at the Webster facility exceeded the acceptable surface limits for radioactivity, as defined by the Texas Administrative Code 289.202.

### 4. Releases or threatened release into the environment of a hazardous substance, pollutant or contaminant

An inventory of the radionuclides at the Webster Site includes predominately Cesium-137, Americium-241, Cobalt-60, and Radium-226. A detailed inventory of the material found in the building is included in Attachment 3. The radionuclides Cesium, Americium, Cobalt, Radium, and the others are designated hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 CFR § 302.4.

The TDH-BRC maintains the perimeter thermo-luminescent dosimeters (TLDs) to monitor the radiation being emitted from the Site. In the report provided by TDH-BRC to EPA on November 8, 2001, the highest annual dose rate recorded at a station at the Webster site was 1966.5 milli-Rem (mRem), and an adjacent TLD recorded 1585.7 mRem. On the opposite side of the building, a TLD recorded an annual dose rate of 1148.7 mRem. The background TLD recorded 71.7 mRem. The permissible annual dose rate for the public is 0.1 Rem, and for

occupational exposure is 5 Rem (10 CFR §§ 20.1302 and 20.1201).

Employees of the neighboring clinic wear personal dosimeters as part of their occupational requirements. Exposures to radiation have been recorded on TLDs worn by employees working in the clinic closest to the Site. Patterns of exposure indicate a significant contribution from the Site, although the exposures recorded are within the permissible limits.

#### 5. NPL status

The Site is not on the NPL. The Site has not been ranked for possible inclusion on the National Priorities List.

#### 6. Maps, Pictures and other graphic representations

Attachment 1 Enforcement Addendum

Attachment 2 Site Map

Attachment 3 Site Specific Decommissioning Cost Estimate, Prepared for the U.S. Bankruptcy Court, 10/18/2001

Attachment 4 U.S. EPA Fact Sheet on Ionizing Radiation, No. 1 (EPA 402-F-98-009)

Attachment 5 U.S. EPA A Fact Sheet on the Health Effects from Ionizing Radiation, No. 2 (EPA 402-F-98-010)

Attachment 6 Removal Action Contract with Texas Commission on Environmental Quality

### B. Other Actions to Date

#### 1. Previous actions

Following the September 17, 2001 conversion of the owner's Chapter 11 bankruptcy proceedings to a Chapter 7 bankruptcy, the State of Texas requested assistance from EPA. Under the OSC's authority, a new fence was constructed to completely enclose the Webster facility. Other repairs and actions were taken to bolster the security of the Webster Site, and EPA also took control of the alarm systems at the Site.

#### 2. Current actions

Following verbal approval by the Region 6 Superfund Division Director on October 26, 2001, crews mobilized to the Site and began the cleanup actions. The sources have been accumulated from the various rooms in the building, and are being sent for disposal at the proper facilities. The gamma sources are being sent to the commercially available disposal sites, and the sealed Americium-241 sources are being recovered by the Department of Energy's Sealed Source Recovery Program. Debris has been cleared from the building, and actions have been taken to stabilize the facility and reduce radiation exposure. The building is being dismantled in a way to minimize any offsite migration of the contaminants. The investigation to determine potentially responsible parties continues.

On August 28, 2002, the Director of the Region 6 Superfund Division approved an Action Memorandum for the Site. This Action Memorandum documented the use of the On-Scene Coordinator's delegated authority to initiate a Classic Emergency Response at the Site; documented the Division Director's verbal approval for a removal action up to \$4,500,000, which covered both the Webster-Gulf Nuclear Site and the related Tavenor-Gulf Nuclear Site; and also approved an increase in the cost of the removal action at the Webster Site up to \$5,850,000.

### **C. State and Local Authorities' Roles**

#### **1. State and local actions to date**

Since the closing of the facility in 1992, the TDH-BRC has worked with Gulf Nuclear and its bankruptcy trustee to identify, remove and dispose or reuse some of the sources left in the Webster facility.

#### **2. Potential for continued State/local response**

The Texas Commission on Environmental Quality (TCEQ) has agreed in writing (Attachment 6) to assume ownership of the Greater Than Class C (GTCC) radioactive waste and to contract for the long-term storage of the GTCC waste. TCEQ will be responsible for the ultimate disposal when a facility becomes available. Consequently, there will be no need for Post Removal Site Controls (PRSC) on this site.

The TDH-BRC has indicated its continued interest and its commitment to participate in the proposed removal action. The TDH-BRC is expected to assist in the identification of radioactive contamination and the isotopes, and confirmation of decontamination. The TDH-BRC assistance will facilitate the disposal and transportation procedures.

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

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

The current conditions at the Site meet the following factors which indicate that the Site is a threat to the public health, welfare and the environment, and a removal action is appropriate under Section 300.415(b)(2) of the National Contingency Plan. Any or all of these factors may be present at a site yet any one of these factors may determine the appropriateness of a removal action.

1. Exposure to Human Populations, Animals or the Food Chain. NCP Section 300.415 (b)(2)(i)

People can be exposed to the radiation from the perimeters of the Site. The perimeter monitoring instruments have detected radiation levels that require limited exposure to people in that area. Within the facility, a member of the general public would exceed the hourly allowable dose of radiation within a few minutes. The allowable dose for individual members of the public is found in 10 CFR § 20.1301, and allows no more than 100 mRem per year and no more than 2 mRem in any one hour. The perimeter dosimetry registered an annual dose of 1966.5 mRem.

In addition to the gamma radiation found at the Site, alpha and beta sources and contamination were also found in the building. The particulates were found as surface contaminants on walls, floors, equipment, and tools. People coming into contact with those contaminated surfaces could have picked up the radioactive particles or ingested or inhaled the contaminated dust particles.

The clinics and medical offices share patients, and as a result there is a high volume of pedestrian traffic in front of the Webster facility. The neighboring breast diagnostic clinic makes uses of every parking space in its lot. Eighteen of the spaces are along the exterior wall of the facility, where the dosimeter registered 1148.7mRem.

2. Hazardous Substances or Pollutants or Contaminants in Drums, Barrels, Tanks, or Other Bulk Storage Containers, That May Pose a Threat of Release; NCP Section 300.415 (b)(2)(iii)

At least 25 vaults have been found at the Site. These vaults are constructed of metal or plastic pipe and placed in the ground, thus using the ground as shielding. The vaults typically are used to store sources. Contaminated oil and sand have been found in some of the vaults. Investigation of the other vaults will be conducted as protective shielding and equipment are erected to safely explore the contents.

Next to some vaults are cut-outs in the concrete that are of the same size and shape as the cut-outs around the vaults. It is unknown if these were intended to be future vaults or are vaults that have been closed. If they are vaults, they may contain additional sources, liquids, or waste. The vaults may have been contaminated and damaged and still contain radioactive waste.

3. Weather Conditions That May Cause Hazardous Substances or Pollutants or Contaminants to Migrate or be Released. NCP Section 300.415 (b)(2)(v)

The area is subject to hurricanes and other severe weather. Since the building itself is contaminated, any structural damage would cause the radioactive contaminants to be released. The building does provide protection for the containers and other contaminated items. However, the building is highly contaminated, and if the building is significantly damaged, the contaminants could easily migrate off-site. Gulf Nuclear installed shielding which was

comprised of pouring lead shot or oil between wall panels or window panes. Damage to these building components could release the shot or oil.

4. Threat of Fire or Explosion, NCP Section 300.415 (b)(2)(vi)

The volume of volatile chemicals is minimal and does not present a high risk of fire or explosion resulting from those chemicals. However, the fire department is on record as saying that should a fire occur, it will take no action to fight the fire or enter the building. A fire could carry radiation in the plume which could be dispersed throughout the city.

5. Availability of Other Mechanisms, NCP Section 300.415 (b)(2)(vii)

The TDH-BRC is expected to participate in the removal action, and its involvement will be instrumental in facilitating the proper disposal of the radioactive materials at the Site. The TDH-BRC has indicated that it has exhausted its capability to dispose of the remaining material. The TDH-BRC does not have the mechanisms to conduct the required removal action.

No activity is expected from the potentially responsible parties (PRPs). The bankruptcy trustee does not have the capability to perform the removal action. Sources and wastes that could easily be linked by the TDH-BRC to a PRP have been previously disposed of off-site.

6. Other Situations or Factors That May Pose Threats to Public Health or Welfare of the United States or the Environment, NCP Section 300.415 (b)(2)(viii)

The State of Texas considers this Site as a potential target for terrorist activity. The Site itself could be the target or could be the source of materials to attack other targets.

If the Site was intentionally set on fire, the contamination could spread over a very wide area. Homes, businesses, hospitals, malls, schools, and parks would be severely impacted. Soil contamination above the action levels could exist in an area greater than the size of the City of Webster. Walls, floors, and air handling equipment are so contaminated that they could significantly contribute to the widespread contamination of the surrounding community.

Anecdotal information from former employees, competitors, and current industry workers suggests that there are several radioactive items buried below the slab. The building was built in different stages during Site operations. It is feasible that material could have been buried prior to the pouring of the different slabs. Hidden rooms and false walls inside the building indicate that the practices at Gulf Nuclear could have resulted in undisclosed, buried material.

## **B. Threats to the Environment**

Runoff from the Site has the potential of contaminating the bayous and other drainage pathways. The water would enter Clear Lake and subsequently Galveston Bay.

#### **IV. ENDANGERMENT DETERMINATION**

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

#### **V. EXEMPTION FROM STATUTORY LIMITS**

The proposed Removal Action continues to meet the same criteria for exemption from the \$2 million statutory limit as documented in the August 28, 2002 Action Memorandum, as described below and also meets the criteria for exemption from the 12 month statutory limit.

##### **1. Immediate Risk to Public Health or Welfare or the Environment**

The amount of radiation recorded at the perimeter of the Site poses an immediate risk to the public who may work or live in close proximity. The exposure standards require limited exposure to the radiation levels detected at the perimeter. Continued exposure to the radiation has been linked to respiratory effects, anemia, and other adverse health effects. The radionuclides are considered carcinogens, and cancer is the major effect of concern. The permissible exposure level for members of the public entering the building or even remaining at the perimeter would be exceeded quickly.

Gamma ( $\gamma$ ), Beta ( $\beta$ ), and Alpha ( $\alpha$ ) radiation have been found in sources and in the form of contamination in the building. Each of these forms of radiation poses a different threat to human health based on the characteristics of each. Gamma radiation is wave-like and can penetrate skin or other such barriers. Beta and Alpha radiation are particles, and barriers are more effective but the particles can enter a body by ingestion or inhalation. The particles could then have an effect on the cells of the body, causing cancer or mutations. See Attachments 4 & 5 for Health Effects of ionizing radiation.

##### **2. Continued Response Actions are Immediately Required to Prevent, Limit, or Mitigate an Emergency**

Continuing the response action will remove the immediate threat from the radioactive sources and contamination. The dose rate from the radiation in the structures is high and requires limits on the exposure to humans. However, should something disrupt the integrity of the building or one or more of the several containers, the migration of the radioactive material could be widespread. There is also concern for the potential of the material being used as a terrorist instrument. The State has expressed concern that material from the Site may lead to the wide spread contamination.



The cleanup efforts at this site have taken much longer to complete than initially predicted. A significant number of sources still remain on-site awaiting shipment for disposal or storage. The contamination of the building structure is significant, and if not addressed the contamination can migrate to contaminate the surrounding facilities. As the roof and walls deteriorate, the contaminated surfaces will be exposed and rainwater can entrain or dissolve the radioactive material. The concentration of contaminants on the building structures is more than sufficient to contaminate a wide area surrounding the Site. The area is flat, and the run-off from the Site tends to be sheet flow. Since many of the contaminants are water soluble, they can be dissolved and deposited in surrounding soils as the water soaks in or evaporates.

### **3. Assistance Will Not Otherwise be Provided on a Timely Basis**

The State has exhausted its response capabilities. Through the BRC, many sources and contaminated materials were properly disposed of at off-site facilities. However, no other PRPs can easily be identified to dispose of the remainder of the material. The owner of the Site, The GNI Group, Inc., is no longer an entity that can respond. There are no other state or local agencies capable of conducting the response on a timely basis.

The TCEQ has committed to contribute ten percent of the cleanup cost to expedite the response (Attachment 6). The TDH-BRC has committed to assist with the EPA-lead response by providing personnel and equipment on-site.

## **VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

### **A. Proposed Actions**

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

The radioactive sources and wastes have been and will continue to be packaged and transported off-site for disposal at a proper facility that is in compliance with the EPA Off-site Rule. The buildings and foundations will be disassembled and disposed of off-site at an appropriate facility. The contaminated material will be screened and segregated to minimize the volume of radioactive material. If any of the sources are viable for reuse, the TDH-BRC may assist with the proper transfer of licensing for future use. The foundation will be backfilled to appropriate grade. Cleanup levels for each different radioactive source are based upon Texas Administrative Code 289.202.

#### **2. Contribution to remedial performance**

No remedial action is expected to take place at this Site. However, should conditions change or more information is found that indicates a remedial action is appropriate, the proposed action is consistent with any potential remedial action.

### 3. Description of alternative technologies

There are no alternative technologies that could feasibly be applied.

### 4. Applicable or relevant and appropriate requirements

This removal action will be conducted to eliminate the actual or potential release of a hazardous substance, pollutant, or contaminant to the environment, pursuant to CERCLA, 42 U.S.C. § 9601 et seq., and in a manner consistent with the National Contingency Plan, 40 CFR, Part 300, as required at 33 U.S.C. § 1321(c)(2) and 42 U.S.C. § 9605. Pursuant to 40 CFR Part 300.415(j), fund-financed removal actions under CERCLA § 104 and removal actions pursuant to CERCLA § 106 shall, to the extent practicable considering the exigencies of the situation, attain the applicable or relevant and appropriate requirements under Federal environmental law.

Due to the fact that consolidation and off-site disposal are the principal elements of this removal action, RCRA waste analysis requirements found at 40 CFR §§ 261.20 and 261.30, RCRA manifesting requirements found at 40 CFR § 262.20, and RCRA packaging and labeling requirements found at 40 CFR § 262.30 are deemed to be appropriate requirements for this removal action. Regulations covering the transportation of radioactive materials include 49 CFR § 173, Subpart I; 10 CFR § 71 and 10 CFR § 61. Ambient air quality standards at 40 CFR 50 will be used, as applicable, to protect the quality of air during the implementation of the action.

### 5. Project schedule

The total duration of activities is expected to be a year to sixteen months, depending upon weather conditions and scheduling, and the availability of disposal contractors and other contractors.

## B. Estimated Costs

The Region 6 Superfund Division Director gave verbal approval on October 26, 2001, to conduct the removal action and established a ceiling of \$4,500,000 for the cleanup contractors and disposal. That ceiling was to cover both the Webster-Gulf Nuclear and the Tavenor-Gulf Nuclear actions. The conditions as understood by EPA on October 26, 2001, were consistent with a combined cost estimate of \$4,500,000; however, the number of unanticipated sources, hidden rooms, and the levels and quantities of contamination have raised significantly the original estimate of costs. The Tavenor-Gulf Nuclear site has been addressed in a separate action memorandum, also dated August 28, 2002. The original approval to initiate the Classic Emergency Response at the Webster Site was provided by the OSC using his delegated authority, with the Classic Emergency Response ceiling initially established at \$50,000.

The amount of radioactive waste found on Site was many times over what was anticipated from previous investigations. The high levels of radiation require extraordinary precautions and practices. The time that workers can spend in proximity of radioactive items has

to be limited. It is necessary to choreograph the activities and moves prior to an entry in order to limit the time spent in highly contaminated areas. Remote handling devices have to be used. The glove-boxes, hot-cells, and other structures were originally assumed to be empty, but they have required painstakingly slow and cautious work to retrieve a large number of sources left haphazardly in them, mixed with loose, raw radioactive material.

Many of the items are too large to be disposed of in a routine manner. Some items are larger than the state permit allows without obtaining a waiver. It would be unsafe to attempt to cut the items down because the radioactivity inside the shielded walls would result in a very high exposure to the workers. Other items are heavier than transportation regulations allow without special waivers. Lead was used to shield many of the cells, and if removed, the exposure from the radioactive contamination would prevent any transportation or disposal.

Several of the items have to be shipped in special containers or casks. The number of available casks is extremely small. There are only two of one type of specific cask available in the world, and only one of those is available for use. The Nuclear Regulatory Commission (NRC) must approve a waiver for use of a cask to haul Cesium-137 instead of plutonium. Lease of the casks is a minimum of 30 days even for an anticipated trip of only a few days. The monthly lease on one cask is \$25,000.

Special representatives from the disposal companies have been contracted to work on the Site. They have been presented with unique and first-time challenges involving the disposal of the waste. Concentrations and activities of the radioactive material found at the Site are normally found only at nuclear power plants or nuclear test sites. Conditions at the Site have demanded innovative and sometimes costly alternatives to address the dangers posed by the conditions of the Site.

<u>Extramural Costs</u>	Action Memo Ceiling	Requested Ceiling
Cleanup Contractor.....	\$5,750,000.....	\$10,000,000
(Includes the \$50,000 ceiling for the Emergency Action)		
START.....	\$100,000.....	\$300,000
TOTAL, EXTRAMURAL COSTS .....	\$5,850,000.....	\$10,300,000

## **VII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

If this action is not taken at the Site, the potential for human exposure to contaminants at the Site will remain unabated. The drums, boxes, and bags will continue to deteriorate and the radioactive material will be released. The building is subject to vandalism, and people coming

into contact with the contamination will be exposed to dangerous levels of radiation. Vandalism or damage from storms could result in the release and migration of the radiation.

## VIII. OUTSTANDING POLICY ISSUES

It is anticipated that several glove-boxes or hot-cells will exceed the classification of Class C radioactive waste. There are no current disposal facilities for commercial greater than class C or GTCC waste. The Department of Energy (DOE) has facilities that are capable of taking the GTCC waste, but has not approved use of those facilities for Site waste. While disposal is not an issue for this site, disposal at future clean-up sites will pose similar issues.

## IX. ENFORCEMENT

For administrative purposes, information concerning confidential enforcement strategy for this Site is contained in the Enforcement Confidential Addendum. The total for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$13,178,345.<sup>1</sup>

(Direct Cost) + (Indirect Costs) = **Estimated EPA Cost for a Removal Action**

(\$10,300,000 + \$184,800) + (25.69% x \$10,484,800) = **\$13,178,345**

## X. RECOMMENDATION

This decision document represents the ceiling increase for the selected removal action for the Webster-Gulf Nuclear Site, in Webster, Harris County, Texas, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the criteria as defined by 40 CFR Section 300.415(b) of the NCP for a removal, and I recommend your approval of the proposed ceiling increase. The total project ceiling will be \$10,300,000.

APPROVED  DATE 11/12/02

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<sup>1</sup> Direct Costs include direct extramural costs and direct intramural cost. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including Department of Justice cost, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not included to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual cost from this estimate will affect the United States' right to cost recovery.

# **TARGET SHEET**

**SITE NAME:** WEBSTER-GULF NUCLEAR SITE

**CERCLIS I.D.:** TX0000605420

**TITLE OF DOC.:** Request for a Ceiling Increase and Exemption  
from Statutory Limits

**DATE OF DOC.:** 22-Oct-02

**NO. OF PGS. THIS TARGET SHEET REPLACES:** 3

**SDMS #:** 919733 **KEYWORD:** 13.05

**CONFIDENTIAL ?** ☒ **MISSING PAGES ?** ☐

**ALTERN. MEDIA ?** ☐ **CROSS REFERENCE ?** ☒

**LAB DOCUMENT ?** ☐ **LAB NAME:**

**ASC./BOX #:**  **RAW ANALYT. DATA ?** ☐

**CASE #:**  **SDG #:**

**COMMENTS :** Attachment 1: Enforcement Addendum is confidential  
and located under sdms # 919735, keyword code  
93.04

# Attachment 6

## SUPERFUND STATE CONTRACT AMENDMENT #1

for the

Webster-Gulf Nuclear Site- Webster (06MD) & Tavenor-Gulf Nuclear/OU1 - Houston (06ME)  
TX0000605420  
Harris County, Texas

### BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION


This document constitutes an amendment to the initial State Superfund Contract for response action at the Tavenor-Gulf Nuclear Site.

The above mentioned contract is hereby amended as follows:

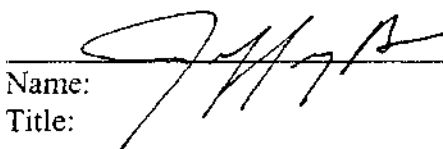
#### 17. B. FINANCIAL RESPONSIBILITIES OF THE PARTIES AND PAYMENTS

Change in the fifth sentence to read: The current total cost estimate for the Webster (06MD)-Gulf Nuclear removal action is \$6,000,000 with TNRCC's ten percent (10%) contribution currently estimated at \$600,000, and the current total cost estimate for the Tavenor (06ME)-Gulf Nuclear removal action is \$3,000,000 with TNRCC's ten percent (10%) contribution currently estimated at \$300,000. Delete sentences six, seven, and eight.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

 Date 5-24-02  
Myron O. Knudson, P.E.  
Director, Superfund Division

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

 Date 6/7/02  
Name:  
Title:

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SUPERFUND DIV.  
DIRECTOR'S OFF.

**REMOVAL ACTION CONTRACT AMENDMENT #2**  
**for the**  
**Webster-Gulf Nuclear Site TX0000605420 (EPA SSID: 06MD)**  
**Webster, Harris County, Texas**  
**&**  
**Tavenor-Gulf Nuclear Site TX0000605455 (EPA SSID: 06ME)**  
**Houston, Harris County, Texas**

**BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

This document constitutes an amendment to the initial and amended Removal Action Contract for response action at the Webster-Gulf Nuclear and Tavenor-Gulf Nuclear Sites.

The Contract heading has been changed to address Tavenor-Gulf Nuclear as a separate site with its own CERCLIS number instead of a separate operable unit under Webster-Gulf Nuclear.

All references to the "Texas Natural Resource Conservation Commission" have been changed to the "Texas Commission on Environmental Quality" and references to "TNRCC" have been changed to "TCEQ".

The appropriate sections of this Contract have been amended to increase the estimated cost of the Webster-Gulf Nuclear Site and to add a requirement for the State to provide for Operations and Maintenance (O&M) for long term storage of radioactive-contaminated waste from the Site(s). The changes are indicated in bold type.

**3. DURATION OF THIS CONTRACT**

This Contract is effective upon execution by the EPA and the TCEQ, and shall remain in effect, **with the exception of the CERCLA Operation and Maintenance (O&M) assurance**, until the removal activities at the Webster-Gulf Nuclear Site are technically complete and/or the final reconciliation of costs for the removal action at the Site have been satisfied (See Reconciliation Provision, Section 27, below), whichever is longer. The EPA and the TCEQ may agree to extend, by amendment (See Amendability Section 26, below), the duration of this Contract when the removal action for this Site takes longer or more time is needed for closeout or for reconciliation.

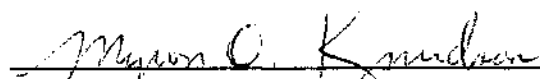
**17. FINANCIAL RESPONSIBILITIES OF THE PARTIES AND PAYMENTS**

- B. The TCEQ will contribute ten percent (10%) of the cost of the removal action described in the Removal Action Memorandum and the SOW, including change orders and claims agreed to by the EPA and the TCEQ. It should be noted that the TCEQ is voluntarily contributing to the removal action at the Site because immediate action is appropriate to protect human health and the environment.



Additionally, the State or a political subdivision did not operate the Site at the time of the disposal of hazardous substances as referenced in 40 C.F.R. § 300.525. The TCEQ shall not be responsible for any portion of the EPA's intramural costs. **The current total cost estimate for the Webster-Gulf Nuclear removal action is being increased to \$10,000,000 with TCEQ's ten percent (10%) contribution currently estimated at \$1,000,000. The current total cost estimate for the Tavenor-Gulf Nuclear removal action is now \$3,950,000 with TCEQ's ten percent (10%) contribution currently estimated at \$395,000.**

**The TCEQ will be responsible for one hundred (100%) percent of the O&M costs for long term storage of the radioactive-contaminated waste from the Site(s) until an appropriate disposal facility is available. The TCEQ agrees to assume ownership of the waste and to provide for shipment and disposal at the ultimate disposal site.**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

 Date 9/19/02  
Myron O. Knudson, P.E.  
Director, Superfund Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

 Date 10-1-02  
 Jeffrey A. Saitas  
Executive Director



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**REMOVAL ACTION CONTRACT  
for the**

**Webster-Gulf Nuclear Site - Webster (06MD) & Tavenor-Gulf Nuclear/OU1 - Houston (06ME)  
TX0000605420  
Harris County, Texas**

**BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
AND THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

**1. GENERAL AUTHORITY**

This Removal Action Contract (hereinafter "Contract" or "RAC") is entered into pursuant to §§ 104(a)(1), and (d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq., as amended to date; the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (hereinafter referred to as the "NCP"); and other applicable Federal regulations.

**2. PURPOSE**

This Contract is an agreement between the United States Environmental Protection Agency ("EPA") and the Texas Natural Resource Conservation Commission ("TNRCC") (hereinafter EPA and TNRCC may be referred to collectively as the "parties" or individually as the "party"). The Governor has designated the TNRCC to interact with the EPA on behalf of the State of Texas (the "State") concerning response actions at the Webster-Gulf Nuclear Site-Webster, Harris County, Texas and Tavenor-Gulf Nuclear/Operable Unit 1 (OU1)-Houston, Harris County Texas (the "Site"). This Contract documents the responsibilities of the Lead Agency (EPA), and of the Support Agency (TNRCC) during the CERCLA removal action. This is a Removal Action Contract and does not apply to a remedial action. Thus, it is not narrowly subject to all Superfund State Contract (SSC) requirements at 40 C.F.R. Part 35, Subpart O. The proposed action at the Site involves removal and proper disposal of the radioactive sources and contaminated wastes, and disassembly and disposal of the contaminated buildings and foundations.

**3. DURATION OF THIS CONTRACT**

This Contract is effective upon execution by the EPA and the TNRCC, and shall remain in effect, until the removal action at the Site is technically complete and/or the final reconciliation of costs for the removal action at the Site has been satisfied (See Reconciliation Provision, Section 27, below), whichever is longer. The EPA and the TNRCC may agree to extend, by amendment (See Amendability Section 26, below), the duration of this Contract when the removal action for the Site takes longer or more time is needed for closeout or for reconciliation.

#### **4. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES**

- A. The EPA has designated:

**Greg Fife  
Removal Team 2 (6SF-R2)  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
(214) 655-6773**

to serve as the On-Scene-Coordinator ("OSC") for this Contract. The designated OSC may be changed by letter to the TNRCC signatories and incorporated by reference herein without amending this Contract.

- B. The TNRCC has designated:

**David Davis  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-2452**

to serve as the State Project Manager ("SPM") for this Contract. The designated SPM may be changed by letter to the EPA signatories and incorporated by reference herein without amending this Contract.

- C. The OSC and the SPM may make necessary project changes that do not substantially alter the scope of the removal action at the Site or increase the cost of the removal action. Significant changes will be documented in writing. Any disagreements between the OSC and SPM shall be resolved in accordance with the Issue Resolution Section, (Section 25), set forth below.

#### **5. NEGATION OF AGENCY RELATIONSHIP**

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between the EPA and the TNRCC. Any standards, procedures, or protocol prescribed in this Contract to be followed by the EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by the Contract and do not constitute a right to control the actions of the EPA. The EPA

(including its employees, agents, and contractors) is not authorized to represent or act on behalf of the TNRCC in any matter relating to the subject matter of this Contract, and the TNRCC (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to this Contract.

**6. SITE DESCRIPTION**

A description of the Site, including the location, background of events, physical characteristics (i.e., Site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media); past response actions at the Site conducted by the EPA, the TNRCC, or others; and description of the removal action to be conducted at the Site is included in the Removal Action Memorandum (RAM) will be sent under separate cover as Appendix 1 and incorporated herein by reference at a later date.

**7. SITE-SPECIFIC STATEMENT OF WORK**

A site-specific Statement of Work (SOW), indicating the tasks to be performed for the removal action will be attached, by amendment, as Appendix 2 and incorporated herein by reference.

**8. PROJECT SCHEDULE**

A general description of the project schedule/milestones for the Site, either by calendar year or Federal Fiscal quarter, is specified in the RAM. This project schedule may be adjusted by the joint authority of the OSC and the SPM, without a written amendment, unless there is an extended delay to the schedule. Changes that increase the project costs, or alter the scope of work, thereby affecting the TNRCC's ability to meet the conditions set out in this Contract, including cost-share requirements, shall necessitate a written amendment to this Contract (see Amendability, Section 26, below).

**9. SITE ACCESS**

**A. Site Access**

The EPA shall use its own authority to secure access to the Site and adjacent properties, as well as the rights-of-way and easements necessary for the EPA or its contractors to complete the removal action undertaken pursuant to this Contract.

**B. TNRCC Access**

Representatives of the TNRCC shall have access to the Site to review work in progress and shall comply with the Site safety plan. The TNRCC and the EPA may coordinate visits to the Site in advance.

C. EPA Liability Waiver

The EPA shall not be responsible for any harm to any TNRCC representative or other person arising out of, or resulting from, any act or omission by the TNRCC in the course of a visit to the Site by the TNRCC.

D. TNRCC Liability Waiver

The TNRCC shall not be responsible for any harm to any EPA representative or other person arising out of, or resulting from, any act or omission by the EPA in the course of a visit to the Site by the EPA.

**10. SITE SAFETY PLAN**

The EPA will be responsible for the development and implementation of the Site safety plan for this project. The Site safety plan will be consistent with the requirements of the NCP and applicable Federal and State safety standards and guidance.

**11. THIRD PARTIES**

A. Exclusion of Third-Party Benefits

This Contract benefits only the TNRCC and the EPA. It extends no benefit or right to any third party not a signatory to this Contract.

B. Liability

The EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. §§ 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

**12. EMERGENCY RESPONSE ACTIVITIES**

Any emergency response activities, as determined by the OSC, shall not be restricted by the terms of this Contract. The EPA, in consultation with the TNRCC, may suspend or modify the removal activities defined in the SOW for this Contract during and/or subsequent to any emergency response actions, in which case, the removal activities, cost share, or terms may be subject to amendment.

### **13. STATE REVIEW**

The TNRCC shall review and provide comment, if necessary, on matters relating to the implementation of the removal action, pursuant to this RAC, within 30 calendar days of receipt of the documents.

### **14. TECHNICAL REPORTS**

The EPA agrees to submit technical reports to the SPM after completion of the work. The reports will detail the technical progress made at the Site during the removal action.

### **15. RECORDS ACCESS**

At the EPA's request and to the extent allowed by State law, the TNRCC shall make available to the EPA any information in its possession concerning the Site. At the TNRCC's request and to the extent allowed by Federal law, the EPA shall make available to the TNRCC any information in its possession concerning the Site. The recipient of any records must comply with the requirements regarding records access described in 40 C.F.R. §31.42(e). The recipient of any records must also require its contractor(s) to comply with the requirements regarding records access described in 40 C.F.R.

§ 31.36(i)(10). The EPA shall not disclose information submitted by the TNRCC under a claim of confidentiality unless the EPA is required to do so by Federal law and has given the TNRCC advance notice of its intent to release that information. Absent a prior confidentiality claim by the TNRCC, and with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, the EPA may make said information available to the public without further notice.

The TNRCC shall not disclose information submitted by the EPA under a claim of confidentiality unless the TNRCC is required to do so by law and has given the EPA advance notice of its intent to release the information.

### **16. RECORDS RETENTION**

All financial and programmatic records, supporting documents, statistical records, and other records related to the Site must be maintained by the TNRCC for a minimum of ten years following the submission of the final Financial Status Report to the EPA. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained by the TNRCC until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later. Microfilm copying must be performed in accordance with the technical regulations and records management procedures contained in 36 C.F.R. Part 1230 and EPA Order 2160.

## 17. FINANCIAL RESPONSIBILITIES OF THE PARTIES AND PAYMENTS

- A. The EPA will contribute ninety percent (90%) of the cost of the removal action described in the Removal Action Memorandum and the SOW, including change orders and claims agreed to by the EPA and the TNRCC.
- B. The TNRCC will contribute ten percent (10%) of the cost of the removal action described in the Removal Action Memorandum and the SOW, including change orders and claims agreed to by the EPA and the TNRCC. It should be noted that the TNRCC is voluntarily contributing to the removal action at the Site because immediate action is appropriate to protect human health and the environment. Additionally, the State or a political subdivision did not operate the Site at the time of the disposal of hazardous substances as referenced in 40 C.F.R. § 300.525. The TNRCC shall not be responsible for any portion of the EPA's intramural costs. The current total cost estimate for the Webster (06MD)-Gulf Nuclear removal action is \$6,000,000 with TNRCC's ten percent (10%) contribution currently estimated at \$600,000. The Action Memorandum is expected to be amended at a later date for a ceiling increase to include removal actions at Tavenor (06ME)-Gulf Nuclear Site/OU1. This increase is estimated to be \$2,000,000 with TNRCC's ten percent (10%) contribution for Tavenor currently estimated at \$200,000. If the Action Memorandum is amended, the RAC will also be amended to reflect increased cost estimates as specified in Section 26 of this agreement.
- C. EPA Invoices and Reports to the TNRCC

The TNRCC shall not be billed for any removal action costs associated with the Site and OU1 until the removal action is complete unless advanced billing is requested by TNRCC. An itemization of costs (invoice) will be furnished to the TNRCC by the EPA, within ninety days after completion of the removal action, for the State cost share requirements. This invoice will show total costs, Federal cost share, and the State cost share for the Site separated out for Webster and Tavenor/OU1. The EPA will include an accounting system report for costs of contractors retained by the EPA to perform the removal action work, including change orders and claims. Final reconciliation of removal action costs will be made at that time. The due date for payment will be forty-five (45) calendar days after billing.

All the EPA invoices shall be sent to the Contracting Support Section of the TNRCC as specified below, with a copy to the SPM at the address indicated in Paragraph 4(B) of this Contract:

Contracts Manager  
Mail Code 102  
Contracting Support Section  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-2135

**D. State Payments To EPA**

All State payments shall be made payable to the EPA and sent to the Regional Financial Management Office as specified below, with a copy to the OSC at the address indicated in Paragraph 4(A) of this Contract:

United States Environmental Protection Agency  
Financial Management Office  
Attn: Collection Officer for Superfund  
Webster & Tavenor/OU1-Gulf Nuclear Superfund Site  
P.O. Box 360582M  
Pittsburgh, PA 15251

To ensure proper credit to the accounts, the words "Webster-Gulf Nuclear (06MD)" must appear on the face of the check for the Webster-Gulf Nuclear Site, and "Tavenor-Gulf Nuclear/OU1 (06ME)" must appear on the face of the check for Tavenor-Gulf Nuclear/OU1.

**E. Interest**

In the event the EPA does not receive payment within forty-five (45) calendar days from the billing date outlined in the invoice, interest shall accrue from the invoice date in accordance with 40 C.F.R. § 31.52 and 40 C.F.R. § 35.6815. Interest will be charged at the rate established for the Superfund Trust Fund, in accordance with the EPA Resource Management Directives System, Chapter 14, "Superfund Accounts Receivable and Billings."

The due date is the date or dates specified in this Contract unless the State invokes the provisions of Section 25, Issue Resolution, set forth in this Contract. If issue resolution is invoked, for purposes of interest calculation, interest will accrue on the unpaid portion of the final resolution amount, beginning on the established invoice date above.

**18. CHANGE ORDER AND CLAIMS MANAGEMENT**

The EPA or its agent(s) will conduct technical and administrative reviews of any contractor change order requests or claims. These reviews will examine the technical basis for the change order or claims and will determine whether they are merited. If any requested change orders/claims would alter the removal action or increase the costs, the EPA will consult with the TNRCC.

**19. INSPECTION OF THE WORK**

- A. A pre-final inspection will be conducted upon preliminary project completion for the removal action at the Site. The pre-final inspection will be led by the OSC. Participants, to accompany the OSC, include the SPM, the removal action contractor, and the EPA oversight contractor

- B. The pre-final inspection will consist of a walk-through inspection of the entire project Site. This inspection will survey the completed Site work, determining whether the project is complete and consistent with the SOW. Jointly, the EPA and the TNRCC will determine if there are any outstanding items. An attempt shall be made to resolve all remaining issues.
- C. A pre-final inspection report will be provided by the EPA to the TNRCC for review. Acceptance of the resolutions specified in the pre-final inspection report is constituted by the TNRCC's signature on the report.

## **20. JOINT FINAL INSPECTION OF THE WORK**

### **A. FINAL INSPECTION**

A final inspection shall be conducted upon completion of any outstanding construction items for the State cost share removal action at or in connection with the Site. The final inspection will be led by the OSC. Participants, to accompany the OSC, include the SPM and all other appropriate parties as determined by the OSC.

### **B. FINAL CERTIFICATION**

The final inspection will consist of a walk-through inspection of the project Site, with the inspection focusing on the outstanding construction items identified in the pre-final inspection. The OSC and the SPM will confirm that all outstanding items have been resolved. If any items are still unresolved, the inspection shall be considered a pre-final inspection requiring another pre-final inspection report. Upon satisfactory completion of the final inspection, the EPA will provide a copy of the final inspection report to the TNRCC.

### **C. ACCEPTANCE OF THE WORK**

The removal action report will be reviewed by the EPA and the TNRCC. The OSC will coordinate, with the SPM, TNRCC's acceptance that the work is complete for the Site.

## **21. PROJECT CLOSEOUT**

The EPA, in consultation with the TNRCC, will determine when the removal action described in the RAM and the SOW has been completed. Enforcement actions and other necessary activities may proceed independent of project closeout.

## **22. RESPONSIBLE PARTY ACTIVITIES**

If at any time during the period of this contract, a responsible party comes forward and agrees to perform any work covered by this Contract, this agreement shall be amended or terminated, as deemed appropriate by the EPA.



## **23. ENFORCEMENT, LITIGATION, AND COST RECOVERY**

### **Notice of Intent to Settle or Initiate Proceedings**

The EPA and the TNRCC may be entitled to assert claims against a third party (herein referred to as the potentially responsible party or "PRP") for reimbursement of any services, materials, monies or other things of value expended by the EPA or the TNRCC for the removal action.

The EPA and the TNRCC hereby agree that they shall cooperate in and coordinate efforts to recover their respective costs of the removal actions taken at the Site, including the negotiation of settlement and the filing and management of any judicial actions against PRPs. The parties shall promptly inform one another on the status of negotiations. Neither the EPA nor the TNRCC shall enter into a settlement with or initiate a judicial or administrative proceeding against any PRP for the recovery of such sums, except after having given notice in writing to the other party to this Contract, at least thirty (30) days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither the EPA nor the TNRCC shall attempt to negotiate for, or collect, reimbursement of any RAC-specific response costs, related to the Removal Action at the Site described in the SOW, on behalf of the other party, and any authority to do so is hereby expressly negated and denied.

## **24. FAILURE TO COMPLY WITH TERMS OF THE CONTRACT**

If the TNRCC fails to comply with the terms of this Contract, the EPA, after providing sixty (60) days notice, may proceed under the provisions of Section 104(d)(2) of CERCLA, 42 U.S.C. § 9604(d)(2), and may seek in the appropriate court of competent jurisdiction to enforce this Contract or to recover any funds advanced or any costs incurred due to a breach of the Contract. If the EPA fails to comply with any requirements of this Contract, the TNRCC, after providing sixty (60) days notice, may seek in the appropriate court of competent jurisdiction to enforce the Contract or recover any funds advanced or any costs incurred due to a breach of the Contract.

## **25. ISSUE RESOLUTION**

TNRCC and EPA acknowledge that it is in their best interest to identify disputes as soon as possible in the process and to resolve those disputes at the earliest possible opportunity. In the event of a dispute between the OSC and the SPM concerning any issue arising in connection with a site, the OSC and the SPM shall attempt to resolve the dispute informally, in consultation with their respective immediate supervisors and staff counsel. If the dispute is not resolved informally between the OSC and the SPM, the issue(s) will promptly be referred to the Director of the Remediation Division for the TNRCC and the Chief of the Removal Branch, Superfund Division, for EPA (collectively the First Tier agency representatives) for resolution. The formal dispute resolution process shall be initiated by either party with a written statement of dispute setting forth the nature of the dispute and the work affected by the dispute. The First Tier agency representatives shall consult with their respective counsel to determine if the dispute is purely technical, purely legal, or a mixture of technical and legal issues. Unless both parties and their counsel agree that the dispute involves technical issues only, then counsel shall participate in the resolution of the dispute at all levels of appeal. Within fourteen calendar days

of receiving notice from either the RPM or the SAC that there is an unresolved dispute, the First Tier agency representatives shall discuss the matter at issue by a meeting or teleconference, assisted by the RPM and the SAC and other technical or legal staff as appropriate.

If the disputed issue cannot be resolved by the First Tier agency representatives within thirty calendar days of receipt of notice from the OSC and the SPM that there is an unresolved dispute, they will refer the dispute in a joint letter briefly describing the issue(s) to the Deputy Director, Office of Permitting, Remediation, and Registration, for TNRCC and the Director, Superfund Division, for EPA (collectively the Second Tier agency representatives). The Second Tier agency representatives may request a Joint Statement of Positions from their respective staff. The Joint Statement of Positions shall be exchanged between the parties and combined into one document in a point-counterpoint, or assertion-response format. The Joint Statement shall be completed within twenty-one calendar days of the request to prepare it. The Joint Statement may include appropriate issues such as the following:

1. A brief description of the disputed issue;
2. A description of the resolution of the issue sought by the agency, including any acceptable alternatives;
3. Citation to the particular subpart of the statute or regulation under which the dispute arises and a hard copy of the excerpt of the statute or regulation in question;
4. An estimate of the schedule within which the dispute must be resolved to ensure orderly progress on site investigations, studies, or field work on the site which is the subject of the dispute; or
5. A discussion of the potential impact of resolution of the dispute on cost recovery and injunctive litigation.

The decision of the Second Tier agency representatives (and counsel, if applicable) will be summarized in writing within thirty calendar days after referral from the First Tier agency representatives. If the disputed issue cannot be resolved by the Second Tier agency representatives within thirty calendar days (the 30-day time frame may be subject to short extensions by mutual agreement of the officials at whose level the dispute rests), they will refer the problem to the Executive Director of the TNRCC and the EPA Regional Administrator (collectively the Third Tier agency representatives). The Third Tier agency representatives may request a Joint Statement of Positions from their respective staff if a Joint Statement was not prepared during Tier Two discussions. The decision of the Third Tier agency representatives will be summarized in writing within thirty calendar days after referral from the Second Tier agency representatives.

If, after consultation between the Third Tier agency representatives no resolution of the dispute can be reached, then the dispute resolution process is terminated and each agency may proceed independently according to its rights under CERCLA, Federal and State law.

At whatever level the dispute is resolved, the resolution of the dispute shall be documented in writing and the identification of the agency representatives resolving the dispute shall be included.

## **26. AMENDABILITY**

This Contract may be amended at any time for reasons including, but not limited to, the revision of

costs or terms to undertake modifications to the removal activities. Written amendments are required when alterations to CERCLA-funded activities are necessary, or when alterations impact the State's cost share amount estimated in this Contract.

Such amendments must include a SOW for the amendment. Any change(s) in this Contract must be made in writing and agreed to by both the TNRCC and the EPA, except as provided in this Contract, and must be reflected in all response agreements affected by the change(s).

## **27. RECONCILIATION PROVISION**

In the event of an overpayment by the TNRCC under this Contract, EPA will not apply balances to satisfy obligations at another site.

## **28. TERMINATION OF THIS CONTRACT**

This Contract shall terminate when:

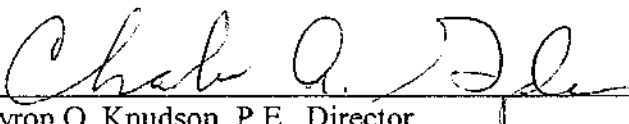
- A. Termination may occur for cause, conclusion, or failure to comply. The parties may enter into a written termination agreement, which will establish the effective date for the termination of this Contract, the basis for settlement of termination costs, and the amount and date of any sums due either party. Such reconciliation costs will include all project costs incurred, as well as any close-out costs, or
- B. If, at any time during the period of this Contract, performance of either all or part of the work described in the SOW is voluntarily undertaken, or undertaken for any other reason by persons or entities not party to this Contract, then this Contract will be modified or terminated as appropriate to allow these actions. Upon modification or termination, the parties to this agreement shall be relieved from further duties to perform those actions undertaken by persons or entities not party to this Contract, or
- C.
  - (1) Removal activities at the Site have been satisfactorily completed and payments have been made, as specified under this Contract, and
  - (2) All State cost-share payments have been submitted to the EPA, and
  - (3) The Financial Management Officer has a final accounting of all project costs, including change orders and contractor claims, and
  - (4) A final cost reconciliation is made in accordance with Section 27 of this Contract, and
  - (5) The EPA provides written notice to TNRCC.

29. EXECUTION


In witness whereof, the parties hereto have executed this Contract in three (3) copies, each of which shall be deemed an original. The undersigned representative of each party to this Contract certifies that he or she is fully authorized by the U.S. Environmental Protection Agency or the State of Texas, respectively, to enter into the terms and conditions of this Contract and to execute and legally bind that party to it.

This Contract and its attachments constitute the complete agreement of the parties and there are no other agreements, oral or otherwise, upon which any party relies.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

 Date 5/13/02  
for Myron O. Knudson, P.E., Director  
Superfund Division

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

 Date 7.3.02  
Name:  
Title: