

**ENVIRONMENTAL REMEDIATION AGREEMENT**  
**Between**  
**THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT**  
**And**  
**JOHN E. JONES OIL CO., INC.**

**BER SCANNED**  
**MAY 31 2011**

**SUBJECT: Environmental Contamination at US Hwy 281, Mile Post 108,  
Great Bend, Kansas**

This Agreement, made between the Kansas Department of Health and Environment ("KDHE") and John E. Jones Oil Co., Inc., ("Jones Oil"), is effective the day and year it is executed by the Secretary of KDHE. KDHE and Jones Oil are sometimes referred to herein, collectively, as the "Parties".

**WHEREAS**, Jones Oil operates a fuel distribution business in Stockton, Kansas, of which a tanker truck, owned by the business, was involved in a vehicle accident resulting in the release of gasoline on May 7, 2011, the general legal description for which is the Southwest ¼ of Section 4, Township 19 South, Range 13 West, Barton County, Kansas and is more commonly known as US Hwy 281, Mile Post 108, Great Bend, Kansas. A depiction of the general Site location is attached hereto and made a part hereof by reference as Attachment "1". The Site is environmentally contaminated and requires further investigation and remediation. For purposes of this Agreement, the term "Site" refers to the property described above and all areas and media where contamination or pollution from said property have been released, are migrating from and/or have come to be located; and,

**WHEREAS**, Jones Oil agrees to further investigate and remediate the Site and KDHE agrees to administer and oversee said investigation and remediation;

**RECEIVED**

MAY 31 2011

**NOW, THEREFORE**, on the day and year first executed by the Secretary of KDHE (“Secretary”) and in consideration of the mutual promises contained herein, the Parties agree as follows:

**THE PARTIES MUTUALLY AGREE:**

1. This Agreement and its attachments contain the entire agreement between the Parties and may only be modified, extended and/or amended if such modification, extension and/or amendment is in writing and executed with the same formality as this Agreement.
2. Jones Oil shall be responsible, without qualification, for meeting all terms, conditions and requirements assigned to it pursuant to this Agreement. Jones Oil shall be entirely responsible for all actions and work performed by its subcontractor(s). All terms, conditions, and requirements of this Agreement shall apply without qualification to each subcontractor of Jones Oil. As used herein, the term “Jones Oil” shall include all subcontractors hired by Jones Oil.
3. All work performed pursuant to this Agreement shall be under the direction and supervision of a professional engineer or geologist licensed in the State of Kansas with expertise in environmental site investigations and remediation. Within thirty (30) days of the effective date of this Agreement, Jones Oil shall notify KDHE of the name, title, license number and qualification of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Agreement. Jones Oil shall notify KDHE of any changes of name, title, license number and qualifications of the engineer, geologist, contractors, subcontractors and their personnel within thirty (30) days of the occurrence of such change.
4. Jones Oil shall indemnify and hold harmless KDHE for any injury or damage to persons

or property caused by the negligent or willful acts or omissions of Jones Oil, its officers, employees, agents, successors, assigns, contractors or any other person acting on Jones Oil's behalf in carrying out any activities pursuant to the terms of this Agreement.

5. This Agreement shall terminate upon Jones Oil's receipt of written notice from KDHE that Jones Oil has satisfactorily completed the terms hereof.
6. No change in the ownership or corporate status of Jones Oil shall alter Jones Oil's responsibilities under this Agreement. Jones Oil shall provide a copy of this Agreement to each subsequent owner, assignee, and/or successor before ownership rights are transferred. Each and every such person and/or entity shall also be bound by the terms of this Agreement.
7. In the event of the dissolution or reorganization of Jones Oil, the obligation hereunder shall survive and be reaffirmed, and shall inure to the members or shareholders of the Jones Oil or the reorganized entity, jointly and severally.
8. All activity contemplated or performed pursuant to this Agreement shall be conducted subject to the approval of KDHE in accordance with the terms of this Agreement and consistent with standards, specifications and schedules approved by KDHE. Said standards, specifications and schedules shall include, but not be limited to the Required Task Summary attached hereto and made a part hereof by reference as Attachment "2". All work plans required pursuant to this Agreement, as approved by KDHE, shall establish task specific dates and timeframes for related implementation, construction and reporting activities.
  - a. Failure to comply with any of the terms and conditions of this Agreement or incorporated attachments shall be considered a violation of this Agreement and may subject Jones Oil to such actions as are authorized by law.

b. All communications, notifications and requests required under this Agreement shall be made in writing. For the purposes of this Agreement, fax transmissions shall be considered as being in writing; e-mail transmissions shall not be considered in writing.

c. Unless otherwise directed by KDHE, Jones Oil shall provide to KDHE one hard copy plus one electronic copy of each deliverable required pursuant to this Agreement and/or its attachments.

d. All documents submitted to KDHE pursuant to this Agreement are subject to KDHE approval and shall be considered draft documents until accepted as final by KDHE.

e. All documents, reports, plans, specifications, schedules and/or attachments required by this Agreement, upon acceptance by KDHE, shall be deemed incorporated into this Agreement by reference.

9. Nothing in this Agreement shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not named herein for any liability arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility or the Site.
10. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature, pursuant to K.S.A. 75-5601, *et seq.*
11. The Secretary has authority and responsibility to protect the public health and the environment; specifically, as it pertains to contamination and remediation of contamination of the waters and soils of the state, under the authority of K.S.A. 65-161 through K.S.A. 65-171z; relative to the safe and sanitary disposal of hazardous wastes, under the authority of K.S.A 65-3430, *et seq.*; in matters involving hazardous substances and the hazardous substance cleanups, under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a, *et seq.*).

12. The presence of the contaminants identified in the soil and groundwater at and surrounding the Site constitutes "pollution" as defined by K.S.A. 65-171d, are causing or threatening to cause pollution of the soil and/or waters of the state, or are, or threaten to become, a hazard to persons, public health or safety.
13. The Secretary has the authority pursuant to K.S.A. 65-3453(a)(6) to enter into contracts or agreements with any person or company to conduct necessary remediation of pollution and contamination.
14. Jones Oil is a "person", "company", "corporation", "institution" or "municipality" within the meaning of K.S.A. 65-164 through K.S.A 65-171z and K.S.A. 65-3452a, *et seq.*
15. Jones Oil owns and/or operates the 1991 Heil tanker trailer KS/RHC514 involved in the vehicle accident on May 7, 2011 at the Site.
16. KDHE was notified that a gasoline spill had occurred as a result of the vehicle accident at the Site. According to the KDHE Incident Notification Report, approximately 6,000 gallons of gasoline had been spilled and approximately 2,000 gallons of gasoline were recovered. Through spill response activities, it was discovered that gasoline is present in the groundwater at the Site. Due to this discovery and the proximity of the Site to public and private drinking water wells, the Site was referred to KDHE-Bureau of Environmental Remediation's (KDHE-BER) State Cooperative Program for follow-up assessment and cleanup.
17. Within thirty (30) days from the effective date of this agreement, Jones Oil agrees to submit a Removal Site Evaluation (RSE) Work Plan (RSE Work Plan) for soil and groundwater, consistent with KDHE-BER Policy #BER-RS-031 (Revised) entitled *Removal Site Evaluation (RSE)/Removal Action Design (RAD)/Removal Action (RA)*

which is attached hereto and made a part hereof by reference as Attachment "3" to KDHE-BER for review and approval. The RSE Work Plan shall include, at a minimum, the requirements set forth in Attachment "2".

18. Upon KDHE approval, Jones Oil shall implement the RSE Work Plan and submit a RSE Report consistent with KDHE-BER Policy #BER-RS-031 (Revised) to KDHE-BER for review and approval. The RSE Report shall include, at a minimum, the requirements set forth in Attachment "2".
19. Upon KDHE approval of the RSE Report, Jones Oil agrees to submit a Removal Action Design Plan (RAD Plan) consistent with KDHE-BER Policy #BER-RS-031 (Revised) to KDHE-BER for review and approval. The RAD Plan shall include, at a minimum, the requirements set forth in Attachment "2".
20. Upon KDHE approval of the RAD Plan, KDHE will make available for public comment a draft Agency Decision Statement (ADS) or draft Corrective Action Decision (CAD). Upon finalization of the ADS or CAD, with consideration of public comment received, Jones Oil agrees to implement the selected Removal Action (RA) in accord with the ADS or CAD and the KDHE-approved RAD Plan.
21. Upon completion of the RA, Jones Oil agrees to submit a RA Summary Report consistent with KDHE-BER Policy #BER-RS-031 (Revised) to KDHE-BER for review and approval. The RA Summary Report shall include, at a minimum, the requirements set forth in Attachment "2".
22. To the maximum extent possible, all communications between the Parties and all documents, reports, approvals, and other correspondence concerning the activities to be performed hereunder, shall be directed through the Parties' designated project

coordinators. The parties agree to provide at least seven (7) days written notice prior to changing project coordinators. The absence of the KDHE project coordinator from the Site shall not be cause for the stoppage of work.

23. The Project Coordinator for KDHE is:

Jessica Crossman, Professional Geologist  
Bureau of Environmental Remediation/KDHE  
Curtis State Office Building  
1000 SW Jackson, Suite 410  
Topeka, Kansas 66612-1367  
Office: 785-291-3066

**KDHE AGREES:**

24. To administer and oversee the work at the Site by Jones Oil.
25. To notify Jones Oil of all deficiencies in documentation or work, to describe the modifications it deems necessary to address such deficiencies and to provide an expected timeframe in which Jones Oil is expected to correct such deficiencies.
26. To submit to Jones Oil an invoice of KDHE oversight and administration costs for the Site up to the date the Secretary executes this Agreement, consistent with the May 17, 2011 authorization letter from Jones Oil to KDHE. Costs incurred by KDHE from the date of the Secretary's execution of this Agreement until the end of calendar quarter following the Secretary's execution of the Agreement shall be provided to Jones Oil by KDHE within forty-five (45) days following the end of the calendar quarter. Thereafter, KDHE shall provide an invoice to Jones Oil for all costs incurred by KDHE during each calendar quarter within forty-five (45) days following the end the calendar quarter. The form and substance of such invoices shall be substantially similar to the exemplar invoice which is attached hereto and made a part hereof by reference as Attachment "4".

**JONES OIL AGREES:**

27. To submit such work products as constitute the practice of geology, engineering, architecture, or surveying, as required by the Kansas Board of Technical Professions, in a format that is sealed, signed, and dated by a professional licensed by the Board to practice in the State of Kansas.
28. To provide reimbursement of costs as follows:
- a. Within thirty (30) days of KDHE providing Jones Oil with an itemized invoice for past costs, Jones Oil shall submit to KDHE the invoiced amount which constitutes reimbursement for past costs incurred by KDHE in connection with this Site up to the date of the Secretary's execution of this Agreement.
  - b. Costs incurred by KDHE from the date of the Secretary's execution of this Agreement until the end of the next calendar quarter shall be billed forty-five (45) days following the end of the calendar quarter. Thereafter, KDHE shall bill Jones Oil for all costs incurred by KDHE during each calendar quarter forty-five (45) days following the end of the calendar quarter. Payment of the invoice is due upon receipt. Jones Oil shall remit a check for the full amount of those costs made payable to the Kansas Department of Health and Environment. Failure to pay the total balance due within thirty (30) days of issuance of the invoice shall be considered a violation of the Order.
  - c. Payment shall be due upon receipt of invoice and shall be made to the order of the Kansas Department of Health and Environment and sent to:

Kansas Department of Health and Environment  
Bureau of Environmental Remediation  
Attn: Administration  
1000 SW Jackson Street, Suite 410  
Topeka, Kansas 66612-1367

Jones Oil shall send a copy of the check and transmittal letter to the KDHE project coordinator specified herein above.

29. Upon receipt of this Agreement, to designate a project coordinator who shall be responsible for overseeing the implementation of this Agreement and to provide said coordinator's name and contact information to KDHE's project coordinator.

30. To provide field activities notification as follows:

a. Jones Oil shall provide KDHE at least seven (7) days advance written notification before conducting any investigation and/or remediation, or other ancillary activities related to such measures, whether conducted pursuant to the Agreement or to a request, requirement or Agreement from any other federal, state or local regulatory authority where the resultant data or information would be used in part or in full to satisfy requirements of the Agreement. Failure to provide advance written notification may result in KDHE rejection of the data obtained or work conducted by Jones Oil.

b. Advance written notification is to be accomplished by completing the KDHE-BER Remedial Section Field Activities Notification Form on the KDHE website at

[http://www.kdheks.gov/remedial/fieldactivities\\_notification.html](http://www.kdheks.gov/remedial/fieldactivities_notification.html) for each activity as distinguished by separate field mobilizations. If website access is not available, Jones Oil may provide required written notification by completing the form attached hereto and made a part hereof as Attachment "5" and submitting the same to the designated KDHE project coordinator.

31. In the event of a sale, transfer, and/or any other disposition of any part of the ownership of Jones Oil, to ensure, by written agreement, that each successor, assignee, transferee and/or other entity receiving any interest in the same shall be bound to perform the obligations and duties assigned to Jones Oil hereunder and that KDHE is recognized as a third party beneficiary of said agreement. Jones Oil shall provide a copy of such writing to KDHE within thirty (30) days of executing the same.

WITNESSETH THE PARTIES' HANDS THE DAY AND YEAR SET FORTH BELOW:

Kansas Department of  
Health and Environment

John E. Jones Oil Co., Inc.

By: Robert Moser  
Robert Moser, M.D.  
Secretary

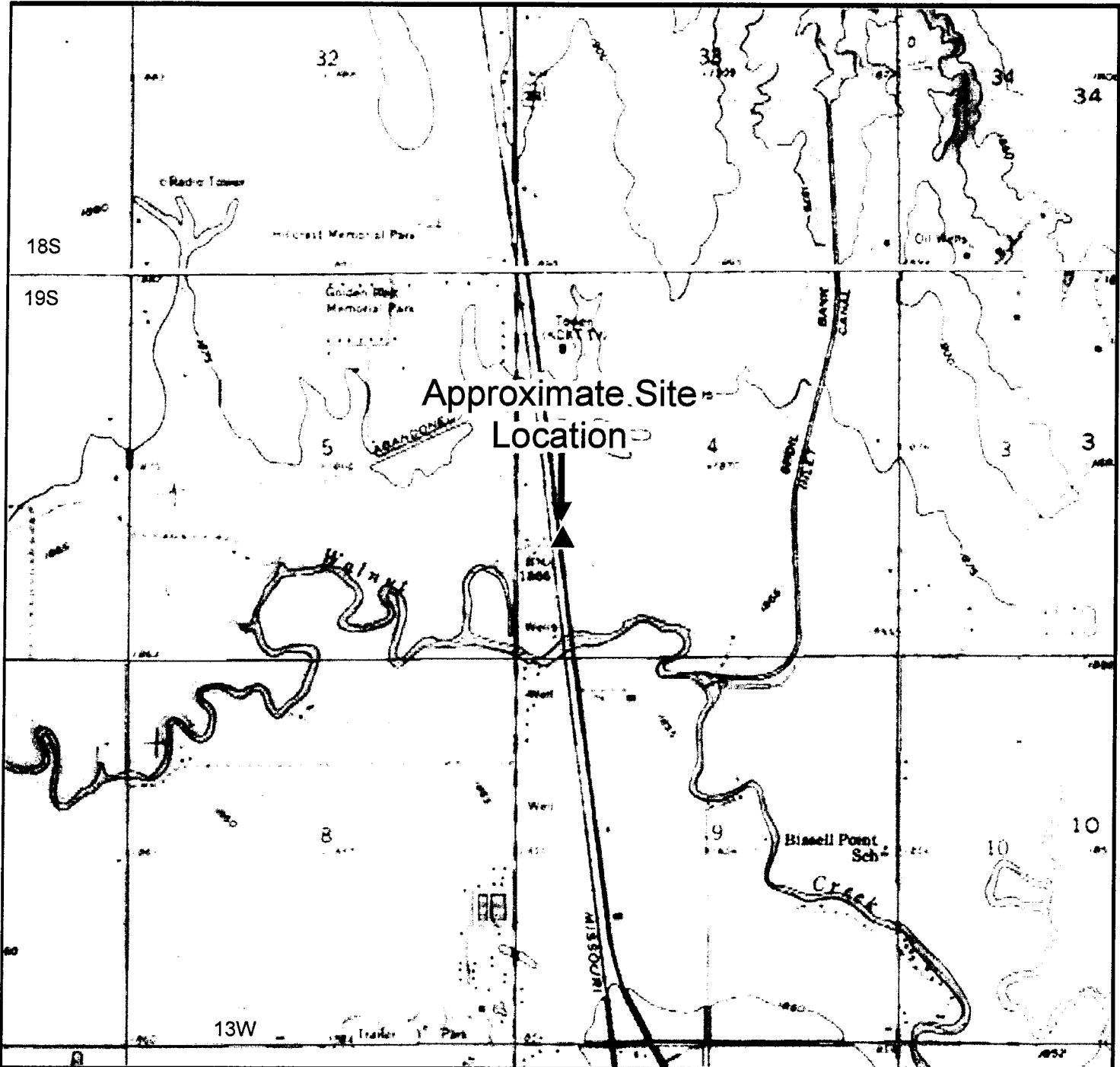
By: [Signature]  
Signature

Patrick Linnell  
Name (Typed or Printed)

6/16/2011  
Date

Corp Sec  
Title

5-26-11  
Date



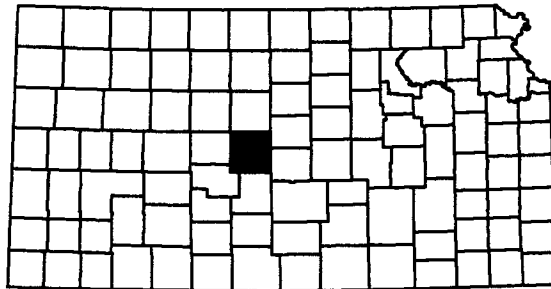
0 1,250 2,500 Feet

Scale of 1:24,000  
when printed at 8.5 x 11

**Kansas**  
Department of Health  
and Environment



Barton County



Attachment 1  
Site Location Map  
John E. Jones Oil  
Gasoline Spill  
Great Bend, KS

**ATTACHMENT "2"**

**REQUIRED TASK SUMMARY**

**1. Work Plans and Reports.**

A. Each work plan and/or report required hereunder shall specifically include Jones Oil's proposed milestone dates for start and completion of activities. Each work plan and/or report shall be approved by KDHE prior to implementation. All requests for schedule extensions shall be submitted in advance by Jones Oil to KDHE's Project Coordinator for approval.

B. KDHE shall review all work plans and reports to determine if the work proposed or conducted will adequately satisfy KDHE requirements for removal site evaluation (RSE), removal action design (RAD), and removal action (RA) at the Site. KDHE shall notify Jones Oil in writing whether the document satisfies KDHE requirements for a work plan or report and is thereby approved, or if necessary, shall state specifically what changes or additions are necessary to meet KDHE specifications.

C. Jones Oil shall revise/resubmit and/or respond to KDHE comments, if any, related to work plan and report submittals to facilitate document finalization for administrative record purposes.

D. Upon KDHE approval, Jones Oil shall initiate implementation of work plan activities within the timeframe(s) specified by KDHE.

E. Upon completion of each field activity, Jones Oil shall submit a report to KDHE no later than thirty (30) days after receiving the laboratory

analytical results for each sampling event.

F. Each report shall include, but not be limited to, the following: narrative description of the activities conducted during the reporting period; a summary description of any deviation from approved sampling procedures; and, laboratory analytical data including summary table(s) and figure(s) (e.g. a map depicting sampling locations and contaminant concentration/distribution).

G. For groundwater monitoring activities, the reports shall also include static water level measurements and top of casing elevations; a map illustrating the site and associated monitoring wells, a contour map of the water level elevation (potentiometric surface map), and all other relevant site data collected during the monitoring event.

**2. Removal Site Evaluation Work Plan.** Jones Oil agrees to submit an RSE Work Plan, prepared consistent with the KDHE-Bureau of Environmental Remediation (KDHE-BER) Policy and Scope of Work BER-RS-031 (Revised) entitled *Removal Site Evaluation (RSE)/Removal Action Design (RAD)/Removal Action (RA)* available at [http://www.kdheks.gov/ber/policies/BER\\_RS\\_031.pdf](http://www.kdheks.gov/ber/policies/BER_RS_031.pdf).

**3. Removal Site Evaluation Report.** Upon KDHE approval, Jones Oil shall implement the RSE Work Plan and submit a RSE Report consistent with KDHE-BER Policy #BER-RS-031 (Revised) available at [http://www.kdheks.gov/ber/policies/BER\\_RS\\_031.pdf](http://www.kdheks.gov/ber/policies/BER_RS_031.pdf).

**4. Removal Action Design Plan.** Upon KDHE approval of the RSE Report, Jones Oil agrees to submit a RAD Plan consistent with KDHE-BER Policy #BER-RS-

ATTACHMENT "2"

031 (Revised) available at [http://www.kdheks.gov/ber/policies/BER\\_RS\\_031.pdf](http://www.kdheks.gov/ber/policies/BER_RS_031.pdf).

**5. Implementation of Removal Action.** Upon KDHE approval of the RAD Plan, KDHE will make available for public comment a draft Agency Decision Statement (ADS) or draft Corrective Action Decision (CAD). Upon finalization of the ADS or CAD, with consideration of public comment received, Jones Oil agrees to implement the selected RA in accord with the ADS or CAD and the KDHE-approved RAD Plan.

**6. RA Summary Report.** Upon completion of the RA, Jones Oil agrees to submit a RA Summary Report consistent with KDHE-BER Policy #BER-RS-031 (Revised) available at [http://www.kdheks.gov/ber/policies/BER\\_RS\\_031.pdf](http://www.kdheks.gov/ber/policies/BER_RS_031.pdf)

**7. Quality Assurance.**

A. All environmental samples shall be analyzed by a laboratory approved for the specific analysis by the Kansas Department of Health and Environmental Laboratories Environmental Laboratory Accreditation Program. All laboratory methods employed shall meet or exceed drinking water standards established under the federal Safe Drinking Water Act or achieve a low enough method detection limit to facilitate comparison to the corresponding Tier 2 levels contained in the *October 2010 Risk-Based Standards for Kansas RSK Manual-5<sup>th</sup> Version*, available at [http://www.kdheks.gov/remedial/download/RSK\\_Manual\\_10.pdf](http://www.kdheks.gov/remedial/download/RSK_Manual_10.pdf).

B. All sample collection and analysis shall be performed in compliance with the approved work plan(s), including scheduling of analyses, documentation of sample collection, handling, and analysis.

C. Laboratory analytical report forms shall be submitted to KDHE for all

analytical work performed pursuant to this Agreement. Any deviation from the procedures and methods set forth in these documents shall be approved by KDHE prior to use.

D. Jones Oil shall notify KDHE within five (5) working days of notice or knowledge of a potential deviation from prescribed procedures or methods. Such notice shall provide information as to the nature of the deviation, if known, and outline a proposed investigation to determine whether the sample or results are representative or should not be considered valid. If the results cannot be validated by evaluation of the quality assurance/quality control procedures, historical data and/or laboratory protocol, Jones Oil shall resample if directed to do so by KDHE.

E. Jones Oil shall notify KDHE at least seven (7) days before conducting re-sampling.

**8. Data/Document Availability.**

A. Jones Oil shall make available to KDHE all results of sampling or tests, or other data generated by or on its behalf with respect to the implementation of this Agreement. Jones Oil shall report the results of such sampling or testing, or other data in accordance with the task specific work plans and schedules identified in this Agreement or as otherwise directed by KDHE.

B. Upon completion of quality assurance and quality control assessment of the data, KDHE shall make available to Jones Oil results of sampling and tests, and other data obtained relative to this Agreement, unless it is

otherwise prohibited by law.

**9. Sample Collection.** At the request of KDHE, Jones Oil shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Jones Oil pursuant to this Agreement. Similarly, at the request of Jones Oil, KDHE shall allow Jones Oil or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Agreement. KDHE shall notify Jones Oil at least seven (7) days before conducting any sampling under this Agreement, provided, however, that if seven (7) days notice of sample collection activity is not possible, KDHE and Jones Oil shall give such advance notice to enable each party to have a representative present during said sample collection activity.

**10. Management of Investigation-Derived Wastes.** Jones Oil shall manage all investigation-derived waste (IDW) generated during any field activities, as specified herein, following the procedures and guidelines as described in the Environmental Protection Agency (EPA) document, *Guide to Management of Investigation-Derived Wastes* (EPA 1992) and KDHE-BER's Standard Operating Procedure (SOP) No. BER-08, *Characterization and Disposal of Investigative Derived Waste*, which is available at [www.kdheks.gov/environment/qmp\\_2000/download/BER\\_SOPs\\_Appendix\\_A.pdf](http://www.kdheks.gov/environment/qmp_2000/download/BER_SOPs_Appendix_A.pdf).

**11. Access.**

A. KDHE and any of its agents or contractors shall be allowed and authorized by Jones Oil to enter and freely move about all property at the Site for the purpose, among other things, of interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the activities set out in the work plan(s); reviewing the progress of Jones Oil in

carrying out the terms of this Agreement; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Jones Oil. Jones Oil shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Agreement.

B. To the extent that work required by the Work Plan(s) must be done on property not owned or controlled by Jones Oil, Jones Oil shall use its best efforts to obtain access agreements from the present owner(s) of such property within thirty (30) days of the date the need for access is known. Best efforts include, but are not limited to, reasonable payment of monies to the property owner. In the event that agreements for site access are not obtained within thirty (30) days of the date the need for access is known, Jones Oil shall notify KDHE regarding both the lack of and its inability to obtain such agreements within seven (7) days thereafter. In the event that KDHE obtains access for Jones Oil, all costs incurred by KDHE shall be reimbursed by Jones Oil.

Attachment 3

BUREAU OF ENVIRONMENTAL REMEDIATION/REMEDIAL SECTION  
POLICY and SCOPE OF WORK  
REMOVAL SITE EVALUATION (RSE)/REMOVAL ACTION  
DESIGN (RAD)/REMOVAL ACTION (RA)

BER POLICY # BER-RS-031 (Revised)  
DATE: November 2008  
PAGES: 8

Remedial Section Chief: 

Date: 11/21/08

Bureau Manager: 

Date: 11/21/08

**ORIGINATOR**

Originator: Rick Bean

Date: 1995

**REVISIONS**

Reviser: Rob Elder and Randy Brown

Date of Revision: 1996

Reviser: E. Jean Underwood

Date of Revision: November 2008

**BUREAU OF ENVIRONMENTAL REMEDIATION/REMEDIAL SECTION**  
**POLICY and SCOPE OF WORK**  
**REMOVAL SITE EVALUATION (RSE)/REMOVAL ACTION**  
**DESIGN (RAD)/REMOVAL ACTION (RA)**

**INTRODUCTION**

This Kansas Department of Health and Environment—Bureau of Environmental Remediation (KDHE—BER) Remedial Section policy and scope of work establishes a management strategy and general framework for implementation of removal action activities at sites under various state cleanup programs. There are several such programs within the Remedial Section responsible for direction and/or oversight of investigation and cleanup of sites throughout Kansas. This policy and scope of work has been developed to promote consistency across Remedial Section programs for which removal action implementation may be appropriate. Where site issues posed are relatively uncomplicated yet must be addressed expeditiously, the U.S. Environmental Protection Agency (EPA) can approach the problem by exercising their removal action authority. On occasion, when dealing with an orphan site or a recalcitrant/reluctant potentially responsible party, KDHE—BER has been able to refer certain sites to EPA to avail ourselves to federal removal action authority. This typically results in sites (or portions of sites) being addressed in a more timely manner with the added benefit of work being accomplished at lesser cost to the State of Kansas. KDHE—BER also applies the more streamlined RSE/RAD/RA approach to presumptive remedy-type sites which have similar characteristics (e.g., former smelter sites) to facilitate overall program efficiency.

**DEFINITION AND GENERAL FRAMEWORK**

The National Oil and Hazardous Substances Contingency Plan (NCP) has defined a removal action as the *cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.* Within the EPA universe, removal actions are categorized as emergency, time-critical or non-time-critical, dependent upon the circumstances posed, urgency and threat of release or potential release, and timeframe in which the action must be initiated.

For more complex removal actions implemented under the auspices of the KDHE—BER Remedial Section, or as requested by the implementing party, a goal will be to achieve general NCP consistency to the extent practicable. Individual programs within the KDHE—BER Remedial Section may have other unique or possibly less rigorous requirements associated with a removal action. Therefore, it is incumbent upon each KDHE—BER project manager to have a clear understanding of all program-specific guidelines, policies and regulatory requirements that may have bearing on removal action implementation at a particular site. On a final introductory note, this policy and scope of work was written using more familiar, universally recognized

terminology from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) realm and is not intended to supplant other analogous Remedial Section program elements. Any removal action or presumptive remedy would be expected to comply with all applicable or relevant and appropriate requirements (ARARs) and to be considered (TBC) guidance identified to that point in time consistent with BER Policy #BER-RS-015.

### **EXAMPLES AND APPLICABILITY**

In determining the appropriateness of any removal action, the following factors, as identified in the NCP (300.415), are to be considered:

- Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances, pollutants or contaminants;
- Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- Hazardous substances in drums, barrels, tanks or other bulk storage containers that may pose a threat of release;
- High levels of hazardous substances, pollutants or contaminants in soils largely at or near the surface that may migrate;
- Weather conditions that may cause migration or release of hazardous substances, pollutants or contaminants;
- Threat of fire or explosion;
- Availability of other appropriate mitigative response mechanisms; and,
- Other situations or factors that may pose threats to public health, welfare or the environment.

There are numerous types of removal actions, or combinations thereof, to be considered by KDHE—BER for a given site including, but not limited to, the following:

- Fences, warning signs or other access control measures;
- Run-off or run-on surface drainage controls;
- Lagoon closure or stabilization of existing retention structures (e.g., berms or dikes);
- Consolidation and capping of contaminated soil or sludge within the area of contamination (AOC);
- Excavation, consolidation or removal of highly contaminated soils from drainage features or other areas;
- Removal of drums, barrels, tanks or other bulk containers;
- Residential yard removal;
- Containment, treatment or disposal of hazardous materials; and,
- Provision of alternate water supply or point-of-use treatment.

As circumstances dictate, the expectation is that each program, through whatever agreement or enforcement mechanism might be available (e.g., administrative order, consent agreement, voluntary agreement, etc.), will contemplate the need for possible removal action measures at a site. Often times, a removal action is the stand-alone response or presumptive remedy action

taken at a site; however, there are instances where a removal action is implemented to address a single issue and subsequent remedial action is performed to comprehensively address all site risks posed.

### **RSE/RAD/RA OBJECTIVES**

A removal action is generally intended for less complex circumstances resulting in more focused characterization and presumptive/streamlined response action implementation, thereby precluding unnecessary treatability study or pilot testing activities. Minimal design effort with emphasis on "off-the-shelf" system components would be typical. Implementation of a removal action under this RSE/RAD/RA policy and scope of work is intended to be a flexible process in which elements can be waived or modified at the discretion of the KDHE—BER project manager to ensure appropriate action is taken in as expeditious and cost-effective a manner as possible. Depending on site-specific circumstances, KDHE—BER may determine the need for additional tasks, including submittal of associated planning and reporting documents, to be conducted concurrently with RSE/RAD/RA activities.

The primary objectives of the RSE/RAD/RA are described as follows:

- 1) Determine the full extent of contamination for all contaminants of concern (COCs) and evaluate the threat to human health and/or the environment;
- 2) Assess the migration of and the chemical/physical properties of the contaminants;
- 3) Collect the data necessary to select an appropriate removal action;
- 4) Gather a sufficient amount of data to support the design parameters of the proposed removal action;
- 5) Evaluate the feasibility, effectiveness and cost of at least two (2) viable removal actions based on the findings of the RSE in comparison with the "no action" alternative;
- 6) Recommend and justify a specific removal action for the site consistent with long-term goals;
- 7) Determine the health and environmental effects of the removal action;
- 8) Establish performance monitoring criteria for the removal action;
- 9) Provide adequate documentation to support the removal action as being consistent with long-term goals for the site; and,
- 10) Implement the removal action to successfully abate, prevent, minimize, stabilize, mitigate or eliminate the release or threat of release.

**RSE/RAD/RA PROCESS**

This policy and scope of work outlines the activities to be completed as part of the RSE/RAD/RA process. At the discretion of the KDHE—BER project manager, and with the approval of KDHE—BER management, some of the steps in the process may be combined or eliminated to best serve project needs.

***STEP 1 RSE Work Plan***—An RSE Work Plan must be prepared and submitted to KDHE—BER for review and approval before any removal action activities commence, unless otherwise requested or approved by KDHE—BER. The RSE Work Plan shall minimally include the following project- or site-specific elements: 1) site assessment/evaluation plan (field sampling plan-equivalent); 2) quality assurance project plan; 3) health and safety plan; and, 4) preliminary screening of potential removal actions, particularly for presumptive remedy-type sites. An RSE implementation schedule must be included in the RSE Work Plan.

The RSE portion of the work plan shall at a minimum include a review of available information and documented findings; a description of the physical site characteristics (e.g., geology, hydrogeology, surface hydrology, land use, etc.); a detailed description of the type(s) of contaminants involved, release characteristics and contaminated media; evaluation or investigation objectives; and, detailed procedures for determining the nature and extent of contamination and evaluating all exposure pathways of concern. A screening level risk assessment appropriate for determining the risk and removal goals for the site may be required at the discretion of the KDHE—BER project manager. RSE requirements may be modified or waived by the KDHE—BER project manager if adequate site information is already available to satisfy the stated RSE objectives listed above.

The preliminary screening of potential removal actions should provide a brief description of possible removal action(s), general response action(s) or presumptive remedy to address threats to human health and the environment. At this stage, it would be appropriate to contemplate the need for and timing of establishment of environmental use controls. In addition, the work plan should present preliminary removal action objectives; ARARs; and, cleanup standards or cleanup goals (e.g., Tier 2 screening levels in the *Risk-Based Standards for Kansas RSK Manual*).

***STEP 2 RSE Report***—The RSE Report shall present the results of the RSE and shall evaluate at least two possible removal action alternatives in comparison to the "no action" alternative in the following format:

- 1) Summary of site assessment/evaluation work completed (as applicable);
- 2) Description of COCs, including a discussion and summary of data collected (with appropriate quality assurance/quality control (QA/QC) and data validation information);
- 3) An evaluation of possible exposure pathways including areal extent of all COCs;
- 4) Removal action goals and appropriate cleanup levels;

- 5) Detailed rationale for any presumptive remedy and/or a description of at least two potential removal action alternatives and a “no action” alternative for the site, including an evaluation of the effectiveness of the removal action alternatives in terms of the long-term objectives and reduction of risk to health and the environment;
- 6) A comparison and justification of the costs of each removal action;
- 7) A consideration of appropriate regulations, ARARs, etc. pertinent to each removal action alternative evaluated;
- 8) Recommendation of appropriate removal action giving adequate supporting rationale for its selection based on the above-defined criteria; and,
- 9) Establishment of adequate post-removal confirmation sampling and/or monitoring to assess removal action performance.

***STEP 3 RAD Plan***—After KDHE issuance of a decision statement or Corrective Action Decision (CAD), a RAD Plan presenting the preferred removal alternative will be submitted to KDHE for review and approval according to the KDHE-approved schedule.

This RAD Plan may vary in detail depending on the requirements of the participating Remedial Section program. The RA package will include, at a minimum, a summary of available site information and available investigation results; a detailed description of the proposed removal action or presumptive remedy; justification and benefit of implementation including removal action objectives; depending on the complexity of the removal action, complete design specifications and drawing/schematics, including any relevant figures and/or site system engineering layouts (e.g., process flow diagram, piping and instrumentation diagram, etc.) and engineering design basis; cost estimate; and, a detailed working schedule presented graphically in the form of a milestone chart (e.g., Gantt chart) to show the duration and interdependencies of the various activities. Depending on the complexity of the proposed removal action and requirements of the specific Remedial Section program, the RAD Plan may need to address operation and maintenance (O&M) as well as performance monitoring needs. Please refer to BER Policy #BER-RS-023 (Section 1.4), for a discussion of typical performance monitoring elements, and to Attachment A, as an example outline of a RAD Plan. Attachment A is not intended to be prescriptive in nature, rather a model from which to work. The exact elements and content of any RAD Plan will be determined by the KDHE—BER project manager dependent upon the overall complexity of the anticipated removal action while being consistent with the specific requirements of the respective Remedial Section program.

***STEP 4 RA Implementation***—Pursuant to the KDHE decision statement or CAD, the RA will be implemented in accordance with the KDHE-approved RAD Plan. Emergency or time-critical removal actions may occur before a decision statement or CAD is issued; however, public involvement activities may be warranted. Ultimately, KDHE—BER will determine whether or not the actions taken are deemed complete or fully operational and functional.

***STEP 5 RA Summary Report***—An RA Summary Report shall be submitted after completion of the removal action or presumptive remedy activities. The RA Summary Report shall include a final summary of removal action activities and an evaluation of the post-removal action confirmation sampling relative to removal action goals. The KDHE—BER project manager will determine the appropriate form or content of the RA Summary Report. If the removal action or presumptive remedy continues as an on-going effort, then the implementing party must submit a monitoring/progress report at a frequency specified in the KDHE—approved Performance Monitoring Plan.

### **PUBLIC INVOLVEMENT**

Public involvement activities must be performed as required by KDHE—BER. An NCP-consistent Community Involvement Plan may be necessary at certain sites and will be implemented upon the discretion of the KDHE—BER project manager. Note that public involvement requirements may vary for the various Remedial Section programs.

### **KDHE DECISION DOCUMENT**

Minimally, KDHE will make available for public comment a draft removal action or presumptive remedy decision statement. The removal action decision statement would be finalized with consideration of public comment received. Alternatively, depending on the complexities posed at the site, KDHE may opt to proceed with a formal CAD. A draft CAD would be made available for public comment and the CAD finalized with consideration of public comment regarding the removal action or presumptive remedy.

### **REFERENCES**

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq. as amended by the Superfund Amendments and Reauthorization Act)

National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300)

EPA/540-R-93-057 (August 1993) entitled “Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA”

U.S. EPA OSWER Directive 9360.0-32FS (December 1993) entitled “Conducting Non-Time-Critical Removal Actions Under CERCLA”

U.S. EPA Memorandum from Stephen Luftig and Barry Breen (February 14, 2000) entitled “Use of Non-Time Critical Removal Authority in Superfund Response Actions”

KDHE—BER *Risk-Based Standards for Kansas RSK Manual – 4<sup>th</sup> Version* (June 2007 as revised)

**Attachment A**  
**RAD Plan**  
**Example Outline**

- I. Site Background
- II. Previous Investigations and Summary of Results
- III. Description of Proposed Removal Action or Presumptive Remedy
- IV. Removal Action Objectives
- V. Removal Action or Presumptive Remedy Design
  - a. Design Basis
  - b. Design Specifications
  - c. Drawings/Schematics
  - d. Cost Estimate
  - e. Detailed Working Schedule (to be periodically updated)

**APPENDICES**

- Appendix A – Quality Assurance Project Plan (or reference existing document)
- Appendix B – Health and Safety Plan (or reference existing document)
- Appendix C – Operations and Maintenance Plan (as necessary)
- Appendix D – Performance Monitoring Plan (as necessary)

# Attachment 4

## Form of Invoice for Oversight Costs (Payroll and Expense Detail Entries are for Example Purposes Only)

### KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Period: XX/XX/XX through XX/XX/XX

Date: XX/XX/XX

Payment Due in 30 days

This invoice is for oversight costs for the State Cooperative Program. Please make check payable to the Bureau of Environmental Remediation and enclose a copy of the invoice with payment to ensure your account is credited appropriately. Questions regarding this invoice should be directed to Linda Benson at (785) 291-3248 or [lbenson@kdheks.gov](mailto:lbenson@kdheks.gov).

Bill To: XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX

Remit To: KDHE/Bureau of Environmental Remediation  
Attn: Linda Benson  
1000 SW Jackson Street, Suite 410  
Topeka, KS 66612-1367

Project Name: XXXXXXXXXXXXXXXXXXXXXXXX  
Consent Order: XX-E-XXXX Cost Acct: XXX

#### Payroll Details:

Title:	Program Consultant 1
Total Hours:	x.xx
Title:	Administrative Assistant
Total Hours:	x.xx
Title:	Administrative Specialist
Total Hours:	x.xx
Title:	Prof Geologist IV
Total Hours:	x.xx
Title:	Environmental Scientist II
Total Hours:	x.xx
Title:	Prof Environmental Eng II
Total Hours:	x.xx

#### Expense Details:

Type of Expense:	Lab Analysis
Vendor Name:	XXXX
Amount:	\$xxx.xx
Type of Expense:	Field Supplies
Vendor Name:	XXXX
Amount:	\$x.xx
Type of Expense:	Travel (SCP)
Vendor Name:	XXXX
Amount:	\$xx.xx

Payroll Costs: \$xxx.xx  
Other Costs: \$xxx.xx  
Internal Costs: \$xxx.xx  
**TOTAL DUE:** \$x,xxx.xx

Please Note: The Kansas Department of Health and Environment's (KDHE) internal office expenses which are administrative costs, computer use, rent, utilities and other support services are included with this invoice. This amount equals 40% of the payroll and other costs totals, except for contractual, field supplies, KDHE equipment use, and lab analysis, which are computed at 12.5%.

## THIS IS AN INVOICE

KDHE now accepts DiscoverCard. A 2.5% convenience fee will be assessed on all DiscoverCard transactions. If paying by DiscoverCard, contact Teresa Hattan at (785)296-8049 or [thattan@kdhe.state.ks.us](mailto:thattan@kdhe.state.ks.us) for details.

# Attachment 5

## KDHE-BER Remedial Section Field Activities Notification Form

This field notification form is only applicable to sites managed by the Remedial Section and is **not** intended for use by other programs such as the Underground Storage Tank Program. If internet access is unavailable to provide the advance written notification via our website (<http://www.kdheks.gov/remedial/index.htm>), please complete this form and fax to 785-296-7030. If you have any problems completing this form, please call 785-296-1673.

Note: If you are amending or canceling a previous notification, please enter the exact ID number (if known).

- I want to submit a new notification.
- I want to amend a previous notification. (Enter ID number if known) \_\_\_\_\_
- I want to cancel a previous notification. (Enter ID number if known) \_\_\_\_\_

(\*denotes required fields)

\*Project Name: \_\_\_\_\_

\*KDHE Project Manager: \_\_\_\_\_

### Location of work:

\*County: \_\_\_\_\_

City (or nearest city): \_\_\_\_\_

### Anticipated dates and duration of work:

\*Start Date (mm/dd/yy): \_\_\_\_\_

\*Duration of work (days): \_\_\_\_\_

- Check this box if work is expected to occur on any weekend or holiday days.

### Primary Field Contact:

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

\*Affiliation/Company: \_\_\_\_\_

\*Primary Phone Number: \_\_\_\_\_ Alternate Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

### Alternate Contact:

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

\*Affiliation/Company: \_\_\_\_\_

\*Primary Phone Number: \_\_\_\_\_ Alternate Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

### \*Brief Description of Work to be Performed:

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## CONCURRENCE SHEET

### BUREAU OF ENVIRONMENTAL REMEDIATION

June 8, 2011

This concurrence form is for your review and comments on the enclosed document; please be advised that this is the ORIGINAL INSTRUMENT.

**IN THE MATTER OF:**     **John E. Jones Oil Gasoline Spill Site**  
                                   **Great Bend, Kansas**  
                                   **Environmental Remediation Agreement**

	Name	Date	Comments
Project Manager (J. Crossman)	<i>Jessica L Crossman</i>	6/8/11	
Unit Chief (E.J. Underwood)	<i>E. J. Underwood</i>	6/8/2011	
Section Chief (R. Bean)	<i>R. Bean</i>	6/8/2011	
Bureau Manager (G. Blackburn)	<i>G. Blackburn</i>	6/8/11	
Legal Office—Staff Attorney (G. Skinner)	<i>Gregory E. Skinner</i>	6/10/2011	
Legal Office— Environmental Group Lead Attorney (S. Feist Albrecht)	<i>Sharon Feist Albrecht</i>	6/10/2011	
Director of Environment (J. Mitchell)	<i>John W. Mitchell</i>	6/13/11	
Deputy Chief Counsel (T. Keck)	<i>T. Keck</i>	6/15/11	
Secretary (R. Moser, M.D.)	<i>R. Moser</i>	6/16/2011	

PLEASE RETURN TO JESSICA CROSSMAN, BER,  
 FOR FINAL DISTRIBUTION

OFFICE OF THE SECRETARY  
 JUN 16 2011  
 RECEIVED