**PHILIP SERVICES SITE PRP GROUP**
**FREQUENTLY ASKED QUESTIONS**
**FOR NON-MEMBERS**

**(July 2014)**

*The information provided herein is general in nature and should not be relied upon as legal advice as to specific factual situations.*

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## General Information and Site History

1. **Where is the Site located?**

The Philip Services Site is located at 2324 Vernsdale Road, approximately 4.5 miles southwest of the City of Rock Hill, South Carolina. The Site consists of approximately 44.5 acres of industrial property on the west side of Wildcat Creek and approximately 108 acres of undeveloped woodland on the east side of Wildcat Creek. The Site is a former RCRA hazardous waste treatment, storage and disposal facility.

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2. **Why was the Philip Services Site PRP Group formed? Who are the Members?**

The Group formed in April 2005 as an unincorporated association of "Potentially Responsible Parties" ("PRPs") who elected to join together in response to allegations by the South Carolina Department of Health and Environmental Control ("DHEC") that they are liable for cleanup of the former Philip Services Corporation facility in Rock Hill, S.C. Soil and groundwater at the Site are contaminated by hazardous substances. The purpose of the Group is to assure a unified negotiation and defense strategy with DHEC and to permit efficient sharing of certain costs for work that benefits all Group Members, including costs of identifying other PRPs, negotiation costs, legal fees, and environmental investigation and remediation costs.

There are over 3,500 primary PRPs for the Site (not including their related parties), ranging from very large volume to comparatively small volume. The PRP Group is made

up of approximately 86 companies that generated or transported relatively large volumes of waste sent to the Site and that will participate in the Consent Decree as performing Work Parties, and another approximately 1,072 that generated or transported relatively small volumes of waste sent to the Site and that will participate in the Consent Decree as non-performing Settling Parties. The Work Parties represent, collectively, more than 208 million pounds, which is 45% of the total waste sent to the site. The PRP Group does not include Philip Services Corporation or any other former Site owners and operators.

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3. **Is the Philip Services Site on the National Priorities List? What is the responding agency?**

The South Carolina Department of Health and Environmental Control ("DHEC") is the agency responding to the Site; the Site has not been placed on the National Priorities List.

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4. **DHEC and the Group contacted me about this Site. Why?**

Documents at the Site indicate on their face that your company generated hazardous substances that were sent to the Site. Hazardous waste manifests signed by your company's employees establish that your company has liability because it "arranged for disposal of hazardous substances" at the Site, which creates liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Specifically, your company is ***jointly and severally liable*** to the State and to the Group for the past and future costs of the cleanup. Both the State and the Group have spent a significant amount of money to date and DHEC estimates that implementation of the selected remedy will cost another $36 million. There is a real possibility that DHEC will file suit against PRPs that do not join the Consent Decree as either a performing party or a nonperforming party. Additionally, the Group may sue your company under 42 U.S.C. § 9613 or § 9607 to recover the Group's cleanup costs incurred at the Site.

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5. **What is CERCLA? What is a PRP? What does it mean to be jointly and severally liable for the cleanup costs?**

The Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, popularly known as CERCLA or the Superfund law, establishes who will be responsible for the cost of an environmental cleanup. CERCLA imposes strict liability on owners and operators of a site, as well as any PRP that sent hazardous substances to the site, either by direct shipment or indirectly by using a third-party transporter, even in full compliance with the law. 42 U.S.C. § 9607. "Hazardous substances" are defined very broadly. 42 U.S.C. § 9601(14). A list of many, but not all, hazardous substances can be found at 40 C.F.R. 302.4.

Companies or persons that face liability under CERCLA are called "Potentially Responsible Parties," or "PRPs." Liability under CERCLA is joint and several, which means each PRP is legally liable to pay the entire multi-million dollar cost of cleaning up the Site, even if the PRP contributed relatively small quantities of hazardous substances.

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6. **This is unfair. Our organization followed the law, and its shipments to the Philip Services Site complied with all rules and regulations.**

The PRP Group is made up of companies just like yours – they followed the law, and they sent material to the Site based on the operators' reputation as competent incinerators of waste. The Site was one of the premier incineration facilities in the Southeast for many years. Unfortunately, the Site somehow became contaminated, which makes all parties that sent waste to the Site liable under CERCLA even though their shipments were lawful at the time.

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7. **How does the Group identify Potentially Responsible Parties?**

From 1980 until mid-1997, organizations shipping hazardous waste to the Site were required to send a copy of waste manifests to the South Carolina Department of Health and Environmental Control ("DHEC"). DHEC held these manifests in its records, and it allowed the Site's PRP Group to image those records and convert them into an electronic database. Manifests from mid-1997 forward were taken from a trailer at the Site containing former Philip Services Corporation documents. The Group uses the information on the manifests that has been coded into the Waste-In Database to identify PRPs that may be liable for cleanup of the Site.

The Group has not retrieved any pre-1980 documents and has no information regarding PRPs that may have sent waste to the Site prior to 1980.

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8. **What is the Site's history?**

Prior to the 1960s, the Site was used for agriculture. Beginning in the mid to late 1960s, the Site began to be used for the storage, treatment and recycling of hazardous waste. From approximately 1966 until 1983, Walter and Peggy Neal operated Quality Drum Company and, later, Industrial Chemical Company, which received third parties' spent solvents, stored them in drums or tanks on the Site, and used distillation to recover the solvents. A liquid waste incinerator was permitted at the Site in September 1977. In 1979 there was a fire that destroyed a distillation unit and drums. In 1981, a hazardous waste incinerator was installed on the Site, and the facility began to process a broader variety of waste streams. Quality Drum and Industrial Chemical merged in December 1982 and the surviving entity dissolved in August 1983.

Environmental sampling and remediation efforts by the former Site operators started at least in 1983, when the Site was purchased from the Neals by Stablex South Carolina, Inc. When Stablex purchased the Site, 26,000 drums of waste and 200,000 gallons of bulk liquid waste were reportedly onsite.

Stablex changed its name to ThermalKem, Inc. in January 1987. Incineration continued while ThermalKem operated the facility as a treatment, storage and disposal facility (TSD). There were several fires at the Site during ThermalKem's ownership. In July 1987 and March 1991, there were incinerator explosions at the Site. In January 1995, a major fire destroyed the drum repackaging area.

In November 1995, Philip Services Corporation ("PSC") purchased ThermalKem through its subsidiary, Petro-Chem, and assumed the operation and management of the facility. PSC curtailed operations and submitted an incinerator closure plan in 1998. PSC operated the Site as a fuel blending storage and transfer facility until 1999 under the name Petro-Chem. The incinerator was removed in 1999. PSC declared bankruptcy in June 2003.

In December 2003, PSC entered a settlement with DHEC and EPA resolving its liability at the Site and establishing a trust fund for use in Site cleanup. The Site was transferred to a trustee, Restoration & Redevelopment Solutions, Inc. DHEC assumed principal oversight and sent notices to several PRPs in November 2004.

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9. **Should I consult a lawyer about this?**

This FAQ document is not meant to provide legal advice. As is true with any important legal matter, we recommend that you consult your attorney. It will be up to your organization to pay legal fees it incurs. An attorney is not required, however, so the decision to hire a lawyer is entirely up to you.

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10. **Who is Common Counsel for the Group?**

The Group has engaged Mr. Andrew Wagner of Robinson, Bradshaw & Hinson, P.A. as its common counsel. Each Member of the Group has the right to select and retain its own counsel to represent such Member on any matter. You may reach Andrew by phone at (919) 328-8839 or by email at Awagner@robinsonbradshaw.com.

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11. **Has the Group hired environmental consultants?**

Yes, the Group engaged URS Corporation as its consultant to provide technical support and to assist in negotiations with DHEC regarding remedy selection, the Record of

Decision and the Consent Decree. URS was selected following an invitation to several consultants to submit proposals and in-person interviews of three potential consultants by the joint Steering and Technical Committees. Among the general selection criteria considered were the consultants' experience with South Carolina regulators, Piedmont geology, monitored natural attenuation, in situ thermal remediation and groundwater containment systems. The URS principals with primary involvement in this project are Brett Berra, Bob Lunardini and Rob MacWilliams.

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12. **Who should I contact if I have questions about the Group?**

Please contact the Group Administrator:

Randy C. Smith
American Environmental Consultants
P.O. Box 310
Mont Vernon, NH 03057
(603) 673-0004 (voice)
(603) 672-0004 (fax)
RandyCSmith1@cs.com

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## Technical Questions/ Remedy

13. **What are the contaminants and areas of concern at the Site?**

DHEC has identified as areas of primary concern the groundwater and soil surrounding the former incinerator, drum storage area, burn pit area, and a fuel oil spill. Comprehensive sampling conducted by DHEC in 2004 found no surface water or sediment impacts to the adjacent creeks. Surficial soil is contaminated with metals. Volatile organic compounds ("VOCs"), principally chlorinated ethenes and ethanes, were found in subsurface soil and the saprolite aquifer. Dense non-aqueous phase liquids have not been detected. There is a substantial, apparently stable plume of petroleum, with free product thicknesses up to 5 feet. Bedrock is highly fractured. VOCs were found in limited portions of the bedrock aquifer at levels substantially lower than those seen in the saprolite aquifer.

Site environmental reports are available by following this link.

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14. **Has DHEC identified a preferred remedy for the Site?**

Yes. The Group has discussed with DHEC its preferred alternative, which is a slight variant of DHEC's Combination Soil and Groundwater Alternative 3 identified in the

Feasibility Study. The preferred remedial alternative consists of a sequenced approach, which includes the following components:

- Installation of regolith and bedrock sentinel wells upgradient of Wildcat Creek.
- Implementation of institutional controls such as deed restrictions and fencing.
- Excavation and offsite disposal of metal contaminated soils outside of VOC treatment areas.
- In situ thermal treatment of select source areas to treat VOCs in soil and regolith groundwater.
- In situ thermal treatment using thermal enhanced multiphase extraction ("MPE") in the fuel oil area.
- SVE in the burn pit area only if additional assessment performed during the remedial design demonstrates SVE is warranted.
- Possible installation of a phytoremediation system upgradient of the creek.
- Implementation of a continuous evaluation period to determine effects of source area treatment and phytoremediation system on downgradient saprolite and bedrock aquifers. Following the first three year continuous monitoring period, the evaluation would determine whether (a) no active containment system is necessary, (b) an active containment system is necessary, or (c) no decision can be made without an additional continuous monitoring period.
- Installation of a hydraulic containment system only if the continuous evaluation (or any subsequent monitoring periods) indicates additional hydraulic containment is necessary to protect Wildcat Creek. This component is included as a contingency plan only and will not be implemented if source area treatment, together with the phytoremediation system, is sufficiently effective.
- Implementation of monitored natural attenuation (MNA).

There are no significant differences at this time between DHEC's preferred remedy and the approaches that have been advocated by the Group.

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15. **Why do DHEC and the Group think in situ thermal is the best remedial strategy for this Site?**

The advantages to using in situ thermal at this Site are:

- Thermal treatment addresses both unsaturated and saturated source areas with certainty.
- The technology is easily implemented beneath building footprints.
- Thermal treatment is unaffected by heterogeneity.
- Thermal treatment results in rapid remediation of source areas to minimize extended O&M and long-term costs at the site (pathway to MNA).

The Steering and Technical Committees and DHEC agree that in situ thermal treatment is the best option for the Philip Services Site.

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16. **Why does DHEC recommend remediation utilizing soil vapor extraction (SVE) in the Burn Pit Area?**

Existing data from the RI indicates that the soils in the Burn Pit Area are clean. However, there are remaining impacts to groundwater in this area, and DHEC does not believe enough data exists to confirm "clean" for soils at this time. Both parties have agreed that additional investigation for soils will be completed in this area to determine if remediation is necessary.

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17. **How long will it take to implement in situ thermal treatment at the Site?**

Both URS and DHEC estimate thermal treatment would be implemented over the course of approximately 1.5 years. The heating of the Site would be phased (*i.e.*, we would heat 50% of the thermal treatment areas at a time) and URS estimates each source area would be heated for approximately 9 months.

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## Cost, Timing & Tasks

18. **How much will the Remedial Action cost?**

DHEC's Feasibility Study ("FS") estimates a remedial action cost of approximately $36 million for Combination Groundwater and Soil Alternative 3. The largest portion of the total estimated cost for the preferred remedy is comprised of the costs associated with in situ thermal treatment (approximately $25.5 million in DHEC's estimate).

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19. **When was the Remedial Investigation completed?**

Beginning in November 2004, DHEC sent notice letters to a number of entities, including the federal government, demanding those entities make a good faith offer to investigate and remediate the Site. The Group formed in April 2005. The Group submitted a good faith offer on June 10, 2005, as did the federal government entities that are PRPs at this Site. After protracted negotiations with the Group, DHEC undertook the Remedial Investigation ("RI") and Feasibility Study ("FS") at the Site, which were paid for from the trust fund generated from the PSC settlement. The Group formed a Technical Committee and hired a consultant to review existing data and provide technical support. The consultant reviewed and synthesized the twenty years of past data collected at the Site and prepared a substantial report that convinced DHEC limited additional RI was all that warranted. Field activities for the RI began in June 2006 and DHEC completed the RI in September 2008.

The RI is available by following this link.

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20. **When was the Feasibility Study completed?**

DHEC delivered the initial draft of the Feasibility Study ("FS") in October 2008. After several meetings with DHEC, the Group submitted extensive comments in February 2009. We received a revised draft in June 2010 and the Technical and Steering Committees again submitted comments in July 2010. A small group of Technical and Steering Committee members, along with Common Counsel and URS, met with DHEC in September 2010 to discuss the Group's comments and preferred alternative. DHEC delivered a final version of the FS in July 2011.

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21. **When can we expect Remedy Selection and the Record of Decision?**

DHEC has made clear that it expects PRPs to fund the Remedial Design and Remedial Action immediately after remedy selection. Recently DHEC mailed to all documented PRPs at the Site a notice letter describing the Proposed Remedial Action Plan ("RAP"), inviting comment and scheduling a public meeting. The Proposed RAP is consistent with the preferred alternative recommended by the Group's Technical Committee after extensive multi-year evaluation by its consultants. There will be a 30 day comment period following the public meeting.

Once the public comment period for the Proposed RAP has closed, DHEC will begin drafting the Record of Decision ("ROD"). DHEC anticipates it will be complete within two months following close of the RAP comment period. Upon issuance of the ROD, DHEC will send out special notice letters to all PRPs at the Site. There will be a 60 day

moratorium, with a 30 day optional extension, commencing at the time the ROD is issued and the special notices are mailed.

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22. **Will the Group conduct a Preliminary Design Investigation?**

The Group offered to conduct a Preliminary Design Investigation ("PDI") and subsequently submitted to DHEC a PDI Work Plan and Quality Assurance Project Plan ("QAPP"). DHEC has now approved both the PDI Work Plan and QAPP, and the Trustee has granted the Group's consultants access to the Site for the purpose of performing the PDI. The Group expects to begin implementation of the PDI in August or September 2014.

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23. **When will the Group enter a Consent Decree with the State?**

The Group and DHEC have negotiated a Consent Decree, which is a settlement under which DHEC will release Group Members from liability in exchange for a promise by Group Members to clean up the Site either through performance or paying a settlement to the Group Members.

The Consent Decree contemplates two categories of PRPs that will be parties to the Consent Decree: (1) Work Parties who will perform the remedial work (generally, PRPs attributed a relatively large share of waste sent to the Site), and (2) Non-performing Parties who will make a settlement payment to the Work Parties. Both Work Parties and Non- performing Parties will receive contribution protection and DHEC's covenant not to sue. Negotiations over the Consent Decree specifics are ongoing.

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24. **What costs have been paid out of the Group's assessments versus out of the PSC Trust Fund?**

As of July 2014, the bulk of the Philip Services Trust money has been spent, at the direction of DHEC, on the Remedial Investigation, the Feasibility Study, and the ongoing operation/maintenance of and capital improvements to the pump and treat system. No Trust funds have been spent on DHEC oversight.

Group funds have been used to prepare a comprehensive review of site investigatory materials dating back to 1980 that helped focus the RI paid for by the Trust; to prepare the Waste-In Database; to develop a remedial strategy the Group believes will be effective and efficient; to prepare comprehensive comments on the RI and FS; to conduct

a survey of the Site; and to prepare a Conceptual Site Model. The Group will also fund the Preliminary Design Investigation and possibly implement a pilot version of the approved remedy. DHEC has made clear that it expects the Group to undertake and fund the Remedial Design and Remedial Action at the Site.

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## Joining the Group as a Work Party

25. **Who is eligible to join the Group?**

Any PRP contributing to the Site more than 50,000 pounds is eligible to join the Group as a Work Party. The Work Parties will be responsible for implementing the approved remedy at the Site.

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26. **Why should I join the Group?**

Joining the Group assures a unified negotiation and defense strategy with DHEC. It also permits the efficient sharing of certain costs for work that benefits all Group Members. Such shared costs include the identification of other PRPs, negotiation costs, legal fees, and environmental investigation and remediation costs. Furthermore, joining the Group assures deferral of legal action against you. The only way to have input in negotiations, share common costs and benefit from a unified strategy is to join the Group.

27. **What are the risks of being a Work Party?**

Work Parties bear the risks of cost overruns, unanticipated conditions, remedy failure, regulatory changes, Work Party bankruptcies and settlement/ collection shortfalls, among others.

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28. **What happens if there's a shortfall in collections under the Group's allocation?**

Any actual shortfall in collections that might occur – *e.g.*, if Work Parties become insolvent, Cash Out settlements fail to be received, etc. – will have to be made up by the Work Parties, and, if the remedy and other response costs exceed $40 million, additional settlement collections from any of the Smaller Parties that settled liabilities subject to the $40 million reopener. Any shortfalls would be re-allocated to the remaining Work Parties using the approved allocation. For example, if the remedy actually costs $36

million and only $34 million is collected, the additional $2 million will be re-allocated to the Work Parties using the Work Party shares set forth in the allocation.

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29. **The Group's current allocation is an "interim allocation." Why isn't it final?**

The Group's current allocation is referred to as an "interim allocation" only because no allocation is truly final until the remedy at the Site is complete. There are no plans to change the allocation at a later date; however, the Work Parties are free to amend the allocation among themselves if they choose to do so. Any amendment to the allocation would require the vote of the Group Members at that time. Parties that have cashed out would not be affected by any future amendment to the allocation.

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30. **I have additional questions. Who do I contact?**

If you have additional questions please contact:

Randy C. Smith
American Environmental Consultants
P.O. Box 310
Mont Vernon, NH 03057
Randycsmith1@cs.com
(603)-673-0004

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31. **What investigation am I required to perform to verify my eligibility?**

Please see the certification on your signature page to the Cash Out Settlement Agreement. You must certify that you have conducted an investigation regarding your shipments to the Site, including any shipments to the Site via any Waste Broker, and that the volume set forth on your signature page is, to the best of your information and belief, accurate.

If, for any reason, the representations made in your certification are not accurate or become inaccurate as a result of newly discovered information, you must promptly provide the corrected information to the Group's Administrator, Randy Smith.

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32. **Can the Group use the cash from the Smaller Party Settlement now?**

Once the Consent Decree has been entered, the Group may use the settlement payments to fund remedial activities and other response costs at the Site.

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33. **I want to settle. How do I do that?**

If you choose to accept the Group's settlement offer, you must read and sign the Cash Out Settlement Agreement provided in your settlement packet. Please mail your signature page and settlement payment to:

Randy C. Smith
American Environmental Consultants
P.O. Box 310
Mont Vernon, NH 03057

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## Waste-In Volume

34. **What is the Waste-In Database?**

The Group has created at its own expense a comprehensive inventory of all known hazardous waste manifests to the Site. These document hazardous substances sent to the Site between 1979 and 1999 by over 3,500 primary PRPs (not including their related parties). The manifests are compiled on a searchable Internet database that is accessible to Group Members only. From this database of nearly 300,000 manifests, the Group has compiled an initial waste-in list that describes the amount of waste each party sent to the Site. The Group's current Work Parties collectively represent roughly 45% of the total waste sent to the Site, with additional PRPs continuing to join the Group.

Only Work Parties may access the Waste-In Database. If you join the Group as a Work Party, you will be provided log in information.

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35. **How did you determine how many pounds my company sent to the Site?**

From 1980 until mid-1997, organizations shipping hazardous waste to the Site were required to send a copy of waste manifests to the South Carolina Department of Health and Environmental Control ("DHEC"). DHEC held these manifests in its records, and it allowed the Site's PRP Group to image those records and convert them into an electronic database. Manifests from mid-1997 forward were taken from a trailer at the Site containing former Philip Services Corporation documents. Your total Waste-In Quantity is the aggregate of the quantities identified on your company's manifests to the Site or those of a brokering organization; Laidlaw Environmental.

Some hazardous waste manifests listed quantities not in pounds, but in a variety of other units, such as gallons, tanker trucks, or yards. The PRP Group has converted all such quantities into pounds, since pounds were the most commonly listed quantity on Site manifests (92% of transactions were in pounds). The Group used the standard conversion factors established by the Environmental Protection Agency in OSWER Directive 9835.16 (February 22, 1991). The most common conversion was from gallons to pounds. We assumed all waste manifested in gallons had a density of 8.33 pounds per gallon (the density of water). We also assumed the unit was pounds where no units were supplied on

the manifest.

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36. **The manifests for my company include duplicates. What should I do?**

Please contact our Group Administrator, Randy Smith, at (603) 673-0004 or RandyCSmith1@cs.com. We will reduce your volume accordingly.

The records that the PRP Group scanned included many duplicate copies. We conducted an electronic comparison to search for duplicative manifests, which may have eliminated more than 95% of the duplicates. Other duplicates may exist, however, as a result of coding interpretations. Please report any duplicates you may have discovered during the review of your manifests.

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37. **The hazardous waste manifest for my company listed the material being shipped as "non-hazardous waste" or "non-regulated waste." Am I automatically safe from liability under CERCLA for this waste?**

No. Hazardous substances under CERCLA include many substances that are not classified as hazardous wastes. As a result, it is no defense to liability to show that your company's hazardous waste manifests listed the material being shipped as a "non-hazardous waste," a "non-regulated waste," or as "non-hazardous" under Department of Transportation regulations.

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38. **I have a Certificate of Destruction that states the waste my company sent was incinerated at the Philip Services Site. Am I safe from liability for any waste for which I have Certificates of Destruction?**

No. You are liable if you arranged for disposal of hazardous substances and those substances arrived at the Site, no matter what happened to those substances when they got there. Many PRPs at this Site have certificates of destruction, but, as a practical matter, it seems likely that some waste that was supposedly "incinerated" instead contaminated the Site. Based on environmental test results to date, the soil and groundwater immediately around the incinerator and storage areas are the most heavily contaminated part of the Site, indicating that much of the contamination likely resulted from sloppy handling practices prior to destruction. Consequently, certificates of destruction will not impact the Waste-In Quantity for a PRP because the certificates of destruction do not provide adequate insight into how waste was handled from the time it arrived at the Site to the time it went through the incinerator.

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39. **The waste I sent to the Site was repackaged and sent to another site for final disposal. Am I safe from liability for any waste I can prove was shipped offsite?**

No. Even after the Site ceased operating the incinerator, it continued to blend fuels in the storage areas. Because the soil and groundwater around the incinerator and storage areas are among the most heavily contaminated areas of the Site, the indications are that handling practices during processing, repackaging and other operations likely permitted contamination to occur prior to any transshipment.

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40. **When is my Waste-In Quantity final? What if new information is discovered after a PRP settles?**

Our Waste-In Database changes as we acquire additional information. Each PRP's Waste-In Quantity is subject to change based on discovery of additional manifests, new information regarding affiliations with other PRPs, etc. For example, if efforts are successful to link brokered waste manifests to the underlying generators that hired the broker to dispose of their waste, some PRPs may experience an increase in their Waste-In Quantity.

Settling Smaller Party Generators that join the Cash Out and Reopener Settlement Agreement must review their internal records and certify that, to the best of their knowledge, the Waste-In Quantity set forth on their signature page to the Settlement Agreement is accurate. If new information discovered after a party joins the Settlement Agreement results in an increase in its Waste-In that would require an increase of $10,000 or more in its Settlement Payment, then the Settling Smaller Party Generator must promptly pay to the Group such increased Settlement Payment amount attributable to the increase in the Settling Smaller Party Generator's Waste-In. If the Settling Smaller Party Generator does not make the additional payment within 30 days after written demand by the Group, or if the corrected Waste-In Quantity causes the Settling Smaller Party Generator to no longer qualify for the settlement, the Group has the right, but not the obligation, to either (a) rescind the Settlement Agreement with respect to the Settling Smaller Party Generator upon written notice and return of any monies paid by the Settling Smaller Party Generator or (b) bring an action in a court of competent jurisdiction to collect such increased Settlement Payment amount attributable to the increase in the Settling Smaller Party Generator's Waste-In Quantity.

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## Certain Non-Members

41. **What happened to Philip Services Corporation? Why isn't it a Group Member?**

Philip Services Corporation ("PSC") declared bankruptcy in June 2003. The State of South Carolina and the United States Environmental Protection Agency settled with PSC and PSC's wholly-owned subsidiaries in December 2003, before the PRP Group was formed and before any PRPs were notified of their potential liability at the Site. Pursuant to this settlement agreement, PSC and its insurers committed to pay a total of $4,281,934, plus interest, by July 2008 into a Site-specific trust fund designated for environmental response costs. So far, this trust fund has funded the Remedial Investigation, preparation of the Feasibility Study and the operation of a groundwater pump and treat system. The

trust does not fund DHEC's oversight costs. PSC, its subsidiaries and its insurers were released by EPA and DHEC and received bankruptcy court protection in connection with their payout under the settlement agreement.

The remaining amount in the PSC trust fund will not be sufficient to pay for the remedy needed at the Site. DHEC expects PRPs to fund the Remedial Design and Remedial Action that will be necessary.

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42. **Are any other former owners or operators of the Site participating in the cleanup? Did any of them have insurance that could cover some of the cleanup costs?**

No former owners or operators are participating at this time, and no viable insurance has yet been identified. Beginning in the 1960s, Walter and Peggy Neal owned and operated the Site through two companies, Quality Drum Company and later Industrial Chemical. According to records filed with the South Carolina Secretary of State, these companies merged in December 1982 and were dissolved in August 1983. Basic investigation of the Neals' assets revealed modest personal holdings. The Neals claim that any records relating to transactions at the Site or insurance policies were destroyed long ago and we have not identified any insurance policies held by the Neals or their companies.

Stablex South Carolina, Inc. purchased the Site from the Neals in 1983. Stablex changed its name to ThermalKem, Inc. in January 1987. Philip Services Corporation ("PSC") purchased ThermalKem in 1995. ThermalKem, Inc. was one of the PSC entities that settled its liability and received contribution protection for Site liabilities in the 2003 bankruptcy settlement with DHEC and EPA. The Group's Allocation Subcommittee preliminarily investigated whether there are any insurance policies naming either Stablex or ThermalKem. The Subcommittee discovered several certificates of insurance identifying Stablex or ThermalKem as the insured and filed claims against those policies on behalf of the Group. Our claims were denied on a number of grounds. The legal grounds for claiming against the Stablex/ ThermalKem policies have numerous issues, and the Group has chosen not to devote a great deal of time to pursuing those policies at this time.

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43. **How is the Group dealing with Federal Government agencies that sent waste to the Site?**

Certain agencies of the federal government are PRPs at the Site. These agencies cannot join the Group because their participation would cause internal Group correspondence and information to become public records. The federal government sent to the Site approximately 24.2 million pounds of waste, of which the government claims at least 13.5 million pounds were from sources immunized under CERCLA §107(d)(1) as waste generated in connection with remediation of third party sites consistent with the National Contingency Plan. The Group requested from the government proof supporting the claimed immunity, but the government has been unwilling to undertake the extensive

document search necessary to provide such proof. The federal government PRPs will be included in the Consent Decree negotiations.

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44. **How is the Group dealing with South Carolina Government agencies that sent waste to the Site?**

Certain agencies of the South Carolina State government, including DHEC, are PRPs at the Site. These agencies cannot join the Group because their participation would cause internal Group correspondence and information to become public records. The State agencies sent to the Site approximately 695,000 pounds of waste, collectively. The State agency PRPs will be included in Consent Decree negotiations, which are ongoing.

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