



West Virginia Department of Environmental Protection
Office of Environmental Remediation
601 57th Street, S.E.
Charleston, WV 25304
(304) 926-0455

VRP NO.	04506
SITE NAME	PQS #5117-Etowah
LOCATION	Barlow Road-Charleston

Agreement

**VOLUNTARY REMEDIATION AGREEMENT FOR
INVESTIGATION AND REMEDIATION ACTIVITIES**

Between

THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

And

PENNZOIL-QUAKER STATE COMPANY

Former Etowah Terminal

1015 Barlow Road

Charleston, West Virginia

VCP No. 04506

Modification No. 4

The undersigned parties to the Voluntary Remediation Agreement between the West Virginia Department of Environmental Protection and Pennzoil-Quaker State Company (now Pennzoil - Quaker State dba SOPUS Products) hereby agree to modify said agreement as follows:

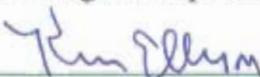
1. Paragraph 1 of the Agreement shall be modified by replacing Pennzoil-Quaker State Company with "Pennzoil - Quaker State dba SOPUS Products". Pennzoil-Quaker State Company will be referred to hereafter as Pennzoil - Quaker State dba SOPUS Products.
2. Paragraph 20 of the Agreement shall be modified by replacing the presented bulleted schedule with the following revised schedule illustrated below:

REVISED SCHEDULE OF SUBMITTALS

- Work Plan for additional surface water sampling submitted by April 30, 2004.
- Additional Surface Water Sampling Report submitted by July 31, 2003.
- Baseline/Residual Human Health and Ecological Risk Assessment submitted by December 31, 2004.
- Remediation Work Plan (if needed) submitted by February 28, 2005.
- Final Report will be submitted by December 31, 2005.

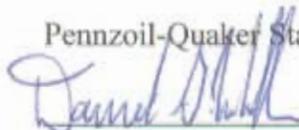
Agreed to by:

West Virginia Department of Environmental Protection



Date: 4/12/04

Pennzoil-Quaker State dba SOPUS Products



Date: 3-12-04

Etowah River Terminal LLC (Owner)



Date: 3/4/04

**VOLUNTARY REMEDIATION AGREEMENT FOR
INVESTIGATION AND REMEDIATION ACTIVITIES**

Between

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And

PENNZOIL-QUAKER STATE COMPANY

Former Etowah Terminal

1015 Barlow Road

Charleston, West Virginia

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1. Paragraph 1 of the Agreement shall be modified by replacing Pennzoil-Quaker State Company with "Pennzoil - Quaker State dba SOPUS Products". Pennzoil-Quaker State Company will be referred to hereafter as Pennzoil - Quaker State dba SOPUS Products.
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- Remediation Work Plan (if needed) submitted by February 28, 2005.
- Final Report will be submitted by December 31, 2005.

Agreed to by:

West Virginia Department of Environmental Protection

Ken Ellison

Date: 4/12/04

Pennzoil-Quaker State dba SOPUS Products

Daniel J. Smith

Date: 3-12-04

Etowah River Terminal LLC (Owner)

Dennis P. Fenwick

Date: 3/4/04

**VOLUNTARY REMEDIATION AGREEMENT FOR
INVESTIGATION AND REMEDIATION ACTIVITES**

Between

THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

And

PENNZOIL-QUAKER STATE COMPANY

Former Etowah Terminal

1015 Barlow Road

Charleston, West Virginia

VCP No. 04506

Modification No. 3

The undersigned parties to the Voluntary Remediation Agreement between the West Virginia Department of Environmental Protection and Pennzoil-Quaker State Company hereby agree to modify said agreement in the following respect:

1. Paragraph 20 of the Agreement shall be modified by replacing the presented bulleted schedule with the following revised schedule illustrated below:

REVISED SCHEDULE OF SUBMITTALS

- Report of Additional Characterization will be submitted by November 30, 2003.
- Baseline/Residual Human Health and Ecological Risk Assessment will be submitted by April 30, 2004.

The following bulleted schedule items remain unchanged:

- Remediation Work Plan (if needed) will be submitted by September 30, 2004.
- Final Report will be submitted by March 31, 2005.

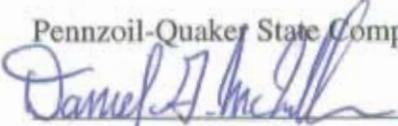
Agreed to by:

West Virginia Department of Environmental Protection



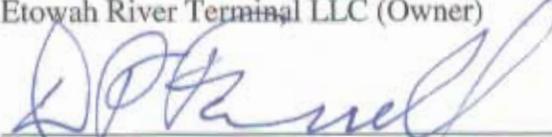
Date: 11/20/03

Pennzoil-Quaker State Company



Date: 9-22-03

Etowah River Terminal LLC (Owner)



Date: 9/15/03

**VOLUNTARY REMEDIATION AGREEMENT FOR
INVESTIGATION AND REMEDIATION ACTIVITES**

Between

THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

And

PENNZOIL-QUAKER STATE COMPANY

Former Etowah Terminal

1015 Barlow Road

Charleston, West Virginia

VCP No. 04506

Modification No. 2

The undersigned parties to the Voluntary Remediation Agreement between the West Virginia Department of Environmental Protection and Pennzoil-Quaker State Company hereby agree to modify said agreement in the following respect:

1. Paragraph 20 of the Agreement shall be modified by replacing the presented bulleted schedule with the following revised schedule illustrated below:

REVISED SCHEDULE OF SUBMITTALS

- Additional Characterization Work Plan will be submitted by January 31, 2003.
- Report of Additional Characterization will be submitted by September 30, 2003.
- Baseline/Residual Human Health and Ecological Risk Assessment will be submitted by March 31, 2004.
- Remediation Work Plan (if needed) will be submitted by September 30, 2004.
- Final Report will be submitted by March 31, 2005.

5/04/03

Agreed to by:

West Virginia Department of Environmental Protection

Ken Ellison

Date: 3/4/03

Pennzoil-Quaker State Company

James A. Smith

Date: 2-5-03

Etowah River Terminal LLC (Owner)

James P. Farrell

Date: 1/29/03



Division of Waste Management
Office of Environmental Remediation
1356 Hansford Street
Charleston, WV 25301
304-558-2508, Fax 304-558-3998

West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Secretary

May 20, 2002

Mr. George Robertson
Shaw E&I Group
1400 B Ohio Avenue
Dunbar, WV 25064-2953

**RE: Voluntary Remediation Agreement, VRA Project # 4506
Pennzoil-Quaker State Etowah Terminal, Charleston, Kanawha County, WV**

Dear George:

Enclosed, please find your copies of the signed and executed Voluntary Remediation Agreement for the site located at Charleston, West Virginia. We look forward to your participation in the program, with the common goal of securing a Certificate of Completion for the site so that the property will remain in productive and protective use for the citizens of our State.

Thank you for your participation in the Voluntary Remediation program, and please feel free to contact me if you have any questions or comments.

Sincerely,

David H. Hight
Project Manager

Enclosure

cc: File
Donald Martin, Project Manager Supervisor, OER

VOLUNTARY REMEDIATION AGREEMENT FOR INVESTIGATION AND REMEDIATION ACTIVITIES

I. INTRODUCTION

1. The West Virginia Department of Environmental Protection (“WVDEP”), by its Secretary, Michael O. Callaghan (“Secretary”) and Pennzoil-Quaker State Company (“applicant”) hereby enter into this Voluntary Remediation Agreement (“Agreement”), pursuant to the Voluntary Remediation and Redevelopment Act, W. Va. Code §22-22-1 et. seq. (“the Act”), for the purpose of investigating and remediating the property that is the subject of this Agreement (“the site”).

II. JURISDICTION

2. This Agreement is entered into by and between the WVDEP, by its Secretary, and the applicant, pursuant to W.Va. Code §22-22-7.

3. The parties agree to the following terms and conditions as satisfying the requirements of the Act for the investigation and remediation of the site. The applicant reserves all rights under common law, the West Virginia Code and federal statutes to seek contribution or indemnity. The WVDEP reserves all rights it may have under common law, the West Virginia Code and federal statutes, to seek contribution or indemnity from persons other than the applicant and those persons identified in W. Va. Code § 22-22-18.

4. By entering into this Agreement, the applicant neither admits nor denies liability.

III. STATEMENT OF ELIGIBILITY

5. The Secretary has determined that the application submitted by the applicant is complete and that the applicant is eligible to participate in the voluntary remediation program. However, neither the Secretary’s determination of eligibility nor the entry into this Agreement precludes any finding by the Secretary at a later date that the site poses an imminent and substantial threat to human health or the environment within the meaning of W.Va. Code § 22-22-7(d). In addition, if it is determined that the applicant withheld or misrepresented information that would be relevant to applicant’s eligibility, the Secretary may withdraw from this Agreement.

IV. PARTIES BOUND

6. This Agreement shall apply to and be binding upon the applicant, its officers, directors, principals, employees, agents, successors, subsidiaries, and assigns, and upon WVDEP, its employees, agents and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the applicant shall in any way alter its status or responsibilities under this Agreement, unless the applicant or WVDEP withdraws from this Agreement as provided herein.

7. The applicant shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. The applicant shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within fourteen (14) days after the effective date of this Agreement, or within fourteen (14) days of the date of retaining their services.

V. DEFINITIONS

8. "Day" or "calendar day" means the 24-hour period between 12:00 A.M. - 12:00 A.M.

9. "No further action" means a site is eligible to receive a Certificate of Completion on the basis of site assessment sampling or sampling data developed under a Voluntary Remediation Agreement which demonstrates that the site meets applicable standards.

10. "Rules" mean those rules adopted by the Secretary of the Department of Environmental Protection pursuant to the Voluntary Remediation and Redevelopment Act and promulgated at 60 CSR 3 as the Voluntary Remediation and Redevelopment Rule.

11. "Site" shall be used in the manner as defined by W.Va. Code §22-22-2(dd) and, for purposes of this Agreement, means the property located in Charleston, Kanawha County, West Virginia and described in the Application for Participating in the Voluntary Remediation Program submitted to WVDEP and accepted by letter dated January 3, 2002.

12. All other terms contained in this Agreement shall be used in the manner as defined by W. Va. Code § 22-22-2 or the Rules.

VI. STATEMENT OF PURPOSE

13. This Agreement sets forth necessary terms and conditions to satisfy the requirements of the Act for the investigation and remediation of the Site.

14. The activities conducted by the applicant under this Agreement are subject to approval by WVDEP as provided herein. Applicant shall provide all necessary information for the Site. The activities conducted by the applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents.

VII. WORK TO BE PERFORMED

15. All work to be performed by the applicant pursuant to this Agreement shall be under the direction and supervision of a licensed remediation specialist. The licensed remediation specialist may be designated by applicant as applicant's project manager pursuant to Paragraph 33. Prior to the initiation of Site work, the applicant shall notify WVDEP, in writing, regarding the name and title of the licensed remediation specialist, if different from the licensed

remediation specialist designated in the Application, and of any contractors and/or subcontractors to be used in carrying out the terms of this Agreement.

16. Applicant shall submit a Voluntary Remediation Work Plan which when implemented provides for the attainment of the applicable standard specified in Paragraph 18 of this Agreement.

Prior to the filing of the application and prior to the execution of this Agreement, applicant has undertaken work at the site. The following documents have been accepted and approved by the licensed remediation specialist in support of the requirements of the Act for the investigation and remediation of the site:

Pennzoil-Quaker State No. 5117, 1015 Barlow Road, Charleston, West Virginia

- “Soil and Groundwater Investigation Report – Etowah Terminal, Charleston, West Virginia,” dated November 21, 2001, prepared by CTL Engineering of West Virginia, Inc.
- “Quarterly Monitoring Report - Quarter 3, 2001, PQS No. 5117, Charleston, West Virginia,” prepared by IT Corporation.
- “Supplemental Phase II Environmental Investigation, PQS No. 5117, Etowah Terminal Facility, Charleston, West Virginia,” dated July 24, 2001, prepared by IT Corporation.
- “Phase II Environmental Investigation, PQS No. 5117, Charleston, West Virginia,” dated January 2001, prepared by IT Corporation.
- “Environmental Site Assessment Report, PQS No. 5117, Charleston, West Virginia,” dated October 2000, prepared by IT Corporation.

For the purposes of remediation and preparing Final Reports the Site may be divided into separate areas, and different human health and ecological remediation standards; e.g., De Minimis, Uniform Risk-Based, Site-Specific Risk-Based, may be utilized for these individual areas. The Site subdivisions, if utilized, will be outlined in an addendum to this agreement at an appropriate time in the future.

17. The Voluntary Remediation Work Plans submitted with this Agreement include the following:

- A Voluntary Remediation Work Plan will be developed and submitted as an addendum to this Agreement.

18. The parties agree that the applicable standard for this Site, consistent with Section 9 of the rule, will reflect a non-residential future use for the Site and that institutional or engineering controls may be utilized to meet applicable standards.

The parties agree that the applicable standard(s) for this Site will be determined upon approval of the work plan(s) and report(s) described in Paragraph 20 of this Agreement. The parties agree that the future determination of standard(s) will be described in a modification to the Agreement.

19. The statutes and regulations for which compliance is mandated in connection with the investigation or remediation of this Site are as follows:

- (a) Air Pollution Control Act, W.Va. Code §§ 22-5-1 et seq.;
- (b) Water Pollution Control Act, W. Va. Code §§ 22-11-1 et seq.;
- (c) Groundwater Protection Act, W. Va. Code §§ 22-12-1 et seq.;
- (d) Hazardous Waste Management Act, W. Va. Code §§ 22-18-1 et seq.;
- (e) Section 103(a) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. §§ 9603(a)
- (f) Section 304 of Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C.A. §§ 11001 to 11050;
- (g) Occupational Safety & Health Act, 29 U.S.C.A. §§ 651 to 678;
- (h) Resource Conservation and Recovery Act, as amended, et. seq., 42 U.S.C.A. §§ 6901, et seq.; and
- (i) Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.;
and any applicable regulation promulgated thereunder.

VIII. SUBMITTAL AND APPROVAL OF WORK PLANS OR REPORTS

20. The applicant shall submit the following work plans or reports in accordance with the schedule provided in this Agreement:

- Additional Characterization Work Plan will be submitted in the 3rd quarter of 2002.
- Report of Additional Characterization will be submitted in the 4th quarter 2002.
- Baseline Human Health and Ecological Risk Assessment will be submitted in the 1st quarter of 2003.
- Remediation Work Plan (if needed) will be submitted in the 2nd quarter 2003.
- Final Report will be submitted in the 2nd quarter 2004.

When additional work plans or reports are planned as a follow-up to initial activities, the applicant shall submit the subsequent work plans, reports (including final reports), and schedules in accordance with a modification to this Agreement.

21. The Secretary may, based upon accuracy, quality, and completeness, either approve or disapprove a work plan or report submitted by applicant.

22. If the Secretary disapproves a work plan or report, the Secretary must, within 5 days of its disapproval, notify the applicant in writing that its work plan or report has been disapproved. Such written notice shall include a list specifying the reasons that the work plan or

report was disapproved, and shall specify all additional information needed for the work plan or report to obtain approval.

23. If the Secretary disapproves a work plan or report as submitted, the applicant must resubmit the work plan or terminate this Agreement as provided in Paragraph 74.

24. The Secretary shall either approve or disapprove all work plans and reports within 30 days of receipt. Any such action taken on a work plan or report must be confirmed in writing and received by the applicant within the 30-day period. An extension of time for approval or disapproval of work plans or reports may be mutually agreed to by and between the applicant and the Secretary. If an extension of time is mutually agreed to by the Secretary and the applicant, it must be confirmed in writing.

25. After work plans or reports are resubmitted, the Secretary shall approve or disapprove the resubmitted work plans or reports within thirty (30) days of receipt, or within such shorter period specified in the party's voluntary remediation agreement. Any action taken on resubmitted work plans or reports must be confirmed in writing and received by the applicant within the thirty (30)-day period for acting on a resubmitted application, or within such shorter period specified in the party's voluntary remediation agreement. An extension of time or action on resubmitted work plans or reports may be mutually agreed to between the applicant and the Secretary. If an extension of time is mutually agreed to by the Secretary and the applicant, it must be confirmed in writing. If resubmitted work plans or reports are not approved by the Secretary, then the Secretary and applicant may mutually agree, in writing, to a schedule for additional review of the resubmitted work plans or reports.

26. If work plans or reports are not approved or disapproved within 30 days of receipt by the Secretary, or if resubmitted work plans or reports are not approved or disapproved within 30 days of receipt by the Secretary, then the work plans or reports will be deemed approved unless such work plans or reports are determined to be materially inaccurate.

27. Notice. Any notice required to be given under the provisions of this section must be in writing and sent via United States certified mail. Notice is complete upon receipt.

28. If the applicant desires to proceed with the implementation of the approved work plan, the applicant must notify the Secretary in writing not more than 90 days after the work plan is approved. After providing such notice, the applicant shall initiate the work detailed in the Voluntary Remediation Work Plan according to the schedule as set forth in the Secretary's Notice of Approval. Upon the Secretary's receipt of notice that the applicant intends to proceed, the fully approved voluntary remediation work plan shall be deemed incorporated into and made an enforceable part of this Agreement.

29. Upon completion of the work contemplated by all work plans, the applicant shall submit to the Secretary the final report prepared by the licensed remediation specialist. The final report shall include all information necessary to verify that all work contemplated by the work plan has been completed and all information required by the rules.

IX. ADDRESSES FOR ALL CORRESPONDENCE

30. Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by certified U.S. mail, return receipt requested, hand-delivery, overnight mail, or by courier service to the following addresses, or to such addresses as applicant or WVDEP may designate in writing.

Documents to be submitted to WVDEP should be sent to:

Mr. David H. Hight
Office of Environmental Remediation
West Virginia Department of Environmental Protection, Division of Waste Management
1356 Hansford Street
Charleston, West Virginia 25301
Phone No. 304.558.2508
Email: dhight@mail.dep.state.wv.us

Documents to be submitted to the applicant should be sent to:

George A. Robertson, LRS IT Corporation 1400 B Ohio Avenue Dunbar, WV 25064 Phone No. 304.768.2600 Email: grobertson@theitgroup.com	Copy to: Daniel G. McQuillen, PG Pennzoil-Quaker State Company 700 Milam Houston, TX 77252-2967 Phone No. 713.546.8517 Email: DanielMcQuillen@PZLQS.com
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X. COMPLIANCE WITH APPLICABLE LAWS

31. All work undertaken by the applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation and Resource Conservation and Recovery Act regulations. The applicant shall be responsible for obtaining all permits, which are necessary for the performance of any work hereunder.

32. Completion of the work performed in accordance with this Agreement shall satisfy all applicable remediation requirements of Chapter 22 of the West Virginia Code, including the following: the Surface Coal Mining and Reclamation Act, W. Va. Code §§22-3-1 et seq.; the Air Pollution Control Act, W. Va. Code §§22-5-1 et seq.; the Water Pollution Control Act, W. Va. Code §§ 22-11-1 et seq.; the Groundwater Protection Act, W. Va. Code §§22-12-1 et seq.; the Solid Waste Management Act, W. Va. Code §§22-15-1 et seq.; the Underground Storage Tank Act, W. Va. Code §22-17-1 et seq.; and the Hazardous Waste Management Act, W. Va. Code §§22-18-1 et seq.

XI. PROJECT MANAGER/LICENSED REMEDIATION SPECIALIST

33. The WVDEP Project Manager for the Site is identified in Paragraph 30 of this Agreement. The applicant has designated George A. Robertson (LRS No. 62) as the applicant's Licensed Remediation Specialist (LRS) and Project Manager for the Site. The LRS shall be responsible for the supervision of all activities under this Agreement. The WVDEP project manager will be the WVDEP designated representative at the Site. To the maximum extent possible, communications between applicant and WVDEP and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During the implementation of this Agreement, the project manager shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager or licensed remediation specialist and shall notify the other party of such change within seventy-two (72) hours.

34. The absence of applicant's or WVDEP's project manager from the Site shall not be cause for the stoppage of work. The applicant's project manager or licensed remediation specialist or his supervisor shall be reasonably available by telephone while work is being performed. The applicant shall designate a person to be in charge that will be available on-site when field work is being performed.

XII. QUALITY ASSURANCE

35. The applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with Quality Assurance Project Plan approved for use by WVDEP throughout any work plan sample collection and analysis activities under this Agreement, unless WVDEP agrees otherwise.

36. The applicant shall provide the WVDEP project manager with reasonable advance notice of all sampling and analysis as detailed in the work plan. To provide quality assurance and maintain quality control, the applicant shall:

- a) Use laboratories certified by WVDEP;
- b) Ensure that all sampling and analyses are performed according to US EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by WVDEP; and
- c) Ensure that any laboratories used by the applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with US EPA guidance documents. As part of such a program, and upon request by WVDEP, such laboratories shall perform analyses of samples provided by WVDEP to demonstrate the quality of analytical data for each such laboratory.

The applicant may use a mobile laboratory (if it is certified by WVDEP) with the advance written approval of the WVDEP Project Manager.

37. In the event any laboratory fails to perform the activities required in Paragraph 36, WVDEP reserves the right to reject any data not gathered pursuant to the requirements listed, and to require that the applicant utilize a different laboratory.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

38. The applicant shall, upon request, make the results of all sampling, including raw data and/or tests or other data generated by the applicant, or on the applicant's behalf, available to WVDEP. WVDEP shall make available to the applicant the quality-assured results of sampling and/or tests or other data similarly generated by WVDEP.

39. At the request of WVDEP, the applicant shall permit an authorized representative of WVDEP to take samples of wastes, soils, air, surface water and groundwater at the Site. For each sample taken, the authorized representative shall provide the applicant a receipt describing the sample obtained and, if requested, a portion of each sample equal in weight or volume to the portion retained.

XIV. ACCESS

40. To the extent that the Site or other areas where work is performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, the applicant shall obtain, or use its best efforts to obtain, access agreements from the present owners. Best efforts shall include, at a minimum, a certified letter from the applicant to the present owner of such property requesting access agreements to permit the applicant or any authorized representative of the WVDEP access to such property. Such agreement shall provide access for authorized representatives of the WVDEP as specified below. In the event such access agreements are not obtained, the applicant shall so notify the WVDEP, which may then, at its discretion, assist the applicant in gaining access.

41. Upon presentation of proper credentials, authorized representatives of the WVDEP shall be provided access by the applicant to the Site and other areas where work is to be performed under this Agreement at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to: inspecting records, operating logs and contracts related to the Site; reviewing the progress of the applicant in carrying out the terms of this Agreement; conducting such tests, inspections and sampling as WVDEP may deem necessarily consistent with this Agreement. The applicant shall permit WVDEP's authorized representatives to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, which pertain to this Agreement over which the applicant exercises control. All persons with access to the Site, pursuant to this Agreement, shall comply with any applicable health and safety plans.

42. Nothing herein shall be construed as restricting the inspection or access authority of WVDEP under any law or regulation.

XV. RECORD PRESERVATION

43. The applicant agrees to preserve, during the pendency of this agreement, and for a minimum of three years after its termination, all documents required by this Agreement and any other documents generated or used to prepare the documents required by this Agreement. Upon request by WVDEP, the applicant shall make available to WVDEP such records, or copies of any such records.

44. The applicant may assert a confidentiality claim for any information submitted pursuant to this Agreement on the grounds that such information, or parts thereof, if made public, would divulge methods, processes, or activities entitled to protection as trade secrets. If no such confidentiality claim accompanies the information when it is submitted to the WVDEP, it may be made available to the public by WVDEP without further notice to the applicant. The applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data regarding environmental conditions at the Site.

XVI. DISPUTE RESOLUTION

45. The parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. The period of informal resolution shall not exceed thirty (30) days from the time that either party commences informal resolution, unless the parties agree otherwise in writing. If, however, the parties are unable to resolve the dispute informally, the applicant may present written notices of such dispute to WVDEP and set forth specific points of dispute and the position of the applicant. This written notice shall be submitted no later than 10 calendar days after the expiration of the informal dispute resolution period. The applicant's project manager will notify the WVDEP project manager immediately by phone or other appropriate methods of communication, prior to written notice, when she/he believes that the parties are unable to resolve a dispute. If either party requests, within 14 days receipt of written notice of the dispute by WVDEP, disputes will be submitted to a mutually-approved impartial third party for non-binding mediation.

46. After the parties have attempted in good faith to resolve disputes pursuant to the terms of Paragraph 45, any unresolved disputes arising out of or relating to this agreement, or the breach thereof, shall be settled by binding arbitration and judgment on the arbitrator's decision may be entered in any court having jurisdiction. The applicant shall notify WVDEP in writing of any unresolved disputes which they believe require arbitration. Within 5 days, the parties shall agree to an arbitrator. If the parties fail to agree to an arbitrator, the arbitration shall be administered by the American Arbitration Association. In selecting a mediator or arbitrator, the parties shall attempt to select persons with experience in environmental matters, including but not limited to a licensed remediation specialist.

47. The applicant shall make a written submission in support of its position to the agreed arbitrator within 10 days of the arbitrator's selection, and the other party may make a written response in support of its position within 7 days thereafter. Upon notice to the parties, the arbitrator may request additional information or make specific inquiry of either party. Within 30 days of the written response under this paragraph, the arbitrator shall render a decision on the

dispute and notify each of the parties of the decision. The applicant agrees to pay for the services of any mediator and arbitrator used by the parties in attempting to resolve disputes arising out of or relating to this agreement. Each party shall pay its own legal fees in conducting mediation or arbitration.

48. Until the dispute is resolved, any actions concerning that element of work in dispute shall be halted. The resolution of the dispute shall be incorporated into the work plan and made an enforceable part thereof. The time schedule for the work in dispute shall be extended by the amount of time needed for resolution. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the work plan.

49. Elements of work and any actions required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure, and into this Agreement. The applicant shall proceed with all remaining work according to the modified plan or procedure.

XVII. FORCE MAJEURE

50. The applicant shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events, which constitute a Force Majeure. "Force Majeure" shall mean conditions or circumstances beyond the reasonable control of applicant which could not have been overcome by due diligence and shall include, without limitation, acts of God, action or inaction of other governmental agencies, or administrative or judicial tribunals or other third parties, or strikes or labor disputes (provided, however, applicant shall not be required to concede to any labor demands), which prevent or delay applicant from complying with the work plan.

51. The applicant shall notify WVDEP by telephone within three (3) working days and by writing no later than seven (7) working days after any event, which the applicant contends, is a Force Majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the applicant to minimize the delay, and the timetable by which these measures will be implemented. Applicant shall have the burden of demonstrating that the event is a Force Majeure. The decision of whether an event is a force majeure shall be made by the Secretary, or the Secretary's designee. The decision shall be immediately communicated to the applicant.

52. If a delay is attributable to a Force Majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the Force Majeure.

XVIII. RESERVATION OF RIGHTS

53. WVDEP and applicant reserve all rights and defenses they may have pursuant to any available authority unless expressly waived herein.

54. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of actions or demands in law or equity which the parties may have against any person, firm, partnership or corporation, not a party to this Agreement for any liability it may have arising out of or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered hereby.

55. The applicant reserves the right to seek contribution, indemnity, or any other available remedy against any persons found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by the applicant in connection with the Site.

56. The WVDEP reserves the right to bring an action, including an administrative action, against the applicant for any violation of statutes or regulations except for the specific violations or releases that are being remediated in the work plan.

57. The WVDEP reserves the right to withdraw its approval of the work plan at any time during the implementation of the work plan if:

- a) WVDEP determines that the applicant has failed to substantially comply with the terms and conditions of this Agreement or the work plan;
- b) Applicant declines to implement the work plan after being notified of its approval by the WVDEP; or
- c) WVDEP determines that a hazardous substance or petroleum has become an imminent or substantial threat to human health or the environment.

Upon WVDEP's withdrawal of its approval, this Agreement shall be terminated and WVDEP reserves the right to bring any action to enforce any statute or regulation under Chapter 22 of the West Virginia Code, including an action regarding the violations or releases that were the subject of this Agreement.

58. The WVDEP acknowledges that, pursuant to W. Va. Code §22-22-18, applicant, upon receipt of the Certificate of Completion, is not liable for claims for contribution concerning matters addressed in the Voluntary Remediation Agreement or any related work plan.

XIX. ADMINISTRATIVE COSTS

59. Applicant agrees to reimburse WVDEP for all of its reasonable administrative costs associated with implementation of this Agreement at the rate of 2.5 times the hourly rate of

the primary employee assigned to the site plus the actual and direct expenses of such employee. Within 60 calendar days of the approval of the work plan, WVDEP shall send the applicant an itemized list of estimated in-house costs that WVDEP expects to incur under this Agreement. The applicant agrees that a reasonable estimate of WVDEP contractor costs will be provided as described in paragraph 59. Itemization will be in standard WVDEP format. The estimated costs may include the preparation of the itemized list of administrative costs. Upon request, the applicant shall have the right to examine any documentation in WVDEP's possession used to develop the itemized list of costs. Requests for such documentation shall be made in writing and must be received by WVDEP within two (2) weeks from the date the applicant receives the estimate of costs.

60. WVDEP agrees to allow the applicant to review and comment on the scope of work and associated cost estimates for outside contractors prior to WVDEP's authorization of the said contractor to proceed with the associated work. WVDEP will strive where possible to use cost effective and qualified outside contractor(s). "Outside contractors" are defined as individuals, partnerships or corporations paid by WVDEP to assist in the oversight of the activities under this agreement (e.g., risk assessment), but shall not include WVDEP employees. Cost estimates and invoices from outside contractors shall be submitted to the applicant within two (2) weeks from the date the WVDEP receives the cost estimate or invoice. The applicant shall raise any and all objections regarding cost estimates or invoiced work to the WVDEP within two (2) weeks from the date the applicant receives the forwarded estimates/invoice(s) from the WVDEP or within two (2) weeks of the receipt by the applicant of any back-up documentation of the said cost estimates/invoices which is contained in WVDEP files and requested by the applicant, whichever shall last occur.

61. Applicant shall pay these costs in accordance with the following provisions. The \$3,000 application fee shall be credited against the first accounting. WVDEP shall periodically send an accounting of contractor, subcontractor and laboratory costs to applicant. Said accounting shall itemize all costs incurred by WVDEP for the previous calendar quarter. Applicant shall pay said amount within 45 days of receipt of the accounting. WVDEP shall also periodically send an accounting of WVDEP's primary employee time charged to this site to applicant. Applicant shall pay said amount within 45 days of receipt of the accounting.

62. Checks should be made payable to the Voluntary Remediation Fund and mailed along with a transmittal letter stating the site name and address to the West Virginia Department of Environmental Protection: Attention: Chief, Office of Environmental Remediation. In addition, a copy of the check and transmittal letter should be mailed to the WVDEP project manager.

XX. NOTICE OF BANKRUPTCY

63. As soon as the applicant has knowledge of its intention to file bankruptcy or no later than 7 days prior to the actual filing of a voluntary or involuntary bankruptcy petition, applicant shall notify WVDEP of its intention to file a bankruptcy petition.

XXI. INDEMNIFICATION

64. Applicant agrees to indemnify and save and hold the state of West Virginia, its agencies, departments, agents, and employees, harmless from and all claims or causes of action arising from, or on account of, acts or omissions of the applicant, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Agreement.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

65. The effective date of this Agreement shall be the date on which the applicant receives the notice that this Agreement has been signed by the Secretary of WVDEP.

66. This agreement may be amended by mutual agreement of WVDEP and the applicant. Amendments shall be in writing and shall be effective when the applicant receives notice that the amendment has been signed by the Secretary of WVDEP.

67. If the Secretary determines that there is an imminent threat to the public, the Secretary may unilaterally modify or amend this Agreement.

XXIII. EXTENSIONS OF TIME PERIODS

68. Any written response shall be deemed timely performed if hand-delivered or postmarked by the last day of any time period prescribed herein. Whenever a party has the right or is required to do some act or make some response within a prescribed period after the service of a notice or other paper on him and the notice or paper is served upon him by United States mail, three (3) days shall be added to the prescribed period.

69. Whenever any party is called upon to respond or otherwise act in a certain number of days, and if the final day occurs on a Saturday, Sunday or legal holiday (whether state or national), such time limitation shall automatically extend to the next business day after such Saturday, Sunday, or holiday.

70. Any time periods specified in this Agreement may be extended only by agreement of the parties.

XXIV. TERMINATION AND SATISFACTION

71. Upon completion of the final report prepared by the LRS, the applicant may seek a Certificate of Completion from the Secretary. Upon receipt of a request for a Certificate of Completion, the Secretary shall determine that the Site meets applicable standards for those areas of the Site and for those contaminants identified in the voluntary remediation agreement and that the applicant has complied with the voluntary remediation agreement and any approved work plans for the Site. Upon making this determination, the Secretary shall issue a Certificate of Completion which conforms substantially to Appendix 60-3C of the rules. Where a land use covenant is required by this Agreement, such Certificate of Completion shall not become

effective until it is properly filed with the Clerk of the County Commission of the county in which the property is located.

If the Secretary determines that the certificate should not be issued because work required by this Agreement and any approved work plans has not been completed or because the Site does not meet applicable standards, the Secretary shall initiate the procedures relating to denial of a certificate as provided in the rules.

72. The provisions of this Agreement shall be satisfied and this Agreement shall terminate when the Secretary issues the Certificate of Completion.

73. Nothing in this Agreement shall restrict the state of West Virginia from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.

74. Applicant may, in its sole discretion, terminate this Agreement by providing to the Secretary fifteen (15) days advance written notice of termination. Only those costs incurred or obligated by the Secretary before the notice of termination is received are recoverable if the Agreement is terminated. If the applicant terminates this Agreement, then the applicant shall pay WVDEP's costs associated with the voluntary remediation within thirty-one (31) days after receiving notice that the costs are due and owing.

XXV. LAND USE COVENANTS

75. The parties agree that restrictions may be required on the future use of the Site. Once such restrictions have been determined, an appropriate land use covenant will be prepared and recorded for the Site.

XXVI. REOPENER

76. Upon agreement of the parties or upon occurrence of one or more conditions of W.Va. Code § 22-22-15, this Agreement may be reopened in accordance with W. Va. Code §22-22-15 and the rules implementing that section.

XXVII. PRECEDENCE OF AGREEMENT

77. In the event that conflict arises among the terms and conditions of this Agreement, the State of Work, or the approved work plan, this Agreement shall govern and the terms and conditions hereunder shall determine the parties' rights and responsibilities.

XXVIII. GOVERNING LAW

78. This Agreement will be governed by the laws of the state of West Virginia.

Pennzoil-Quaker State Company (APPLICANT)

Printed Name: DANIEL G. McQUILLEN
Title: SENIOR HYDROGEOLOGIST
Signature: Daniel G. McQuillen
Date: 4-03-02

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Printed Name: Ken Ellison
Title: Director
Signature: Ken Ellison
Date: 5/15/02

Include if applicant is not owner of the site and Agreement calls for a land use covenant:

Etowah River Terminal LLC (OWNER)

Etowah River Terminal LLC, as owner of the site referenced in the above Agreement hereby acknowledges that said Agreement requires the imposition of a land use covenant and, in consideration of the benefits accruing to the site from said Agreement, I hereby agree to the imposition of such land use covenant and agree to cooperate in the execution and filing of such land use covenant.

D. P. Farrell (member)
Owner (Signature)

4/15/02
Date

DENNIS P. FARRELL
Owner (Printed)



IT Corporation

1400-B Ohio Avenue
Dunbar, WV 25064-2935
Tel. 304.768.2600
Fax. 304.768.4523

A Member of The IT Group

February 4, 2002

Mr. David H. Hight
Project Manager
WVDEP-DWM, Office of Environmental Remediation
1356 Hansford Street
Charleston, WV 25301

**RE: Revised Submittal Date for Voluntary Remediation Program Agreement
PQS Etowah Terminal No. 5117
Charleston, West Virginia**

Dear Mr. Hight:

In general accordance with Title 60 code of state regulations Series 3, this is a notification regarding a revised submittal date for the Voluntary Remediation Agreement for the site referenced above. IT Corporation (IT), on behalf of Pennzoil-Quaker State Company (PQS), has revised this submittal date from February 4, 2002 to March 15, 2002. The submittal date has been revised to accommodate the property owner's travel from Houston, Texas to participate in the site visit. Additionally, the revised date should allow sufficient time to determine deliverables, timelines needed to achieve site closure and also provide ample time for the property owner to review the agreement.

Should you have questions in the interim I can be contacted at 304.768.2600 or by e-mail at grobertson@theitgroup.com.

Sincerely,

IT Corporation (www.theitgroup.com)
A Member of The IT Group

George A. Robertson, PG, LRS
Licensed Remediation Specialist

c: Dan McQuillen – PQS

FEB - 7 2002