

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:	)	Docket HWCA: P1-01/02-004
	)	
Vopak USA Inc.	)	
5353 Jillson St.	)	
City of Commerce, CA 90040-2115)	)	
EPA ID No. CAD 020745246	)	CORRECTIVE ACTION
	)	CONSENT AGREEMENT
Vopak USA, Inc.	)	
	)	
Respondent.	)	
	)	Health and Safety Code
	)	Section 25187
	)	

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INTRODUCTION

1. The Department of Toxic Substances Control (DTSC or Department) and Vopak USA Inc. (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code (HSC) Section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent is the owner and operator of a hazardous waste facility located at 5353 Jillson Street, City of Commerce, California (Facility).

1.4. Respondent engages in the management of hazardous waste pursuant to a permit issued by the Department of Health Services, DTSC's predecessor agency, on August 27, 1984. Respondent's authorization to operate the Facility as a hazardous waste facility was to end on August 27, 2010. However, Respondent notified DTSC of its intent to close the Facility on or about February 1, 2001.

1.5. The terms used in this Consent Agreement are as defined in Section 66260.10 of Title 22 of the California Code of Regulations (Cal. Code Regs.), except as otherwise provided.

1.6. Respondent agrees to implement all approved work plans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.

1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to HSC Section 25187.

#### FINDINGS OF FACT

2.1. On June 28, 1996, DTSC completed a Resource Conservation and Recovery Act (RCRA) Facility Assessment (RFA). The RFA identifies the following solid waste management unit that either has released or may release hazardous waste or hazardous waste constituents into the environment: the permitted storage unit located on the rear dock of the west warehouse. However, sampling activities subsequently conducted by the Respondent at and around the permitted storage unit further identify the presence of eleven different, validated volatile organic compounds (VOCs) in the soils beneath the west warehouse and beneath the permitted storage unit. The detected VOCs include: tetrachloroethene, trichloroethene, 1,1-dichloroethane, 1,1-dichloroethene (DCE), 1,2-dichloroethane, chloroform, cis-1,2-dichloroethene, trichlorofloromethane, trichlorotrifloromethane, chlorobenzene, and 1,2,4-trimethylbenzene. The VOCs were detected predominantly at depths of 30-40 feet below ground surface.

2.2. Based on the information available to DTSC and a site inspection conducted by DTSC, DTSC concludes that further investigation is needed to determine the nature and extent of contamination in the soils and ground water at the permitted storage unit, the west and east warehouses, the front offices, all indoor air, the surrounding loading dock, and the immediately adjacent parking areas to the west warehouse (refer to attached figure 1).

2.3. Hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: soil and ground water.

2.4. The hazardous waste and hazardous waste constituents of concern at the Facility are tetrachloroethene, trichloroethene, 1,1-dichloroethane, 1,1-dichloroethene (DCE), 1,2-dichloroethane, chloroform, cis-1,2-dichloroethene, trichlorofloromethane, trichlorotrifloromethane, chlorobenzene, 1,4-dioxane, and 1,2,4-trimethylbenzene.

2.5. The Facility is located near other industrial and commercial facilities to the north and east. To the west is a residential area consisting of mainly single family dwellings, and to the south is a small oil drilling and production facility.

#### PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning

the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice.

#### WORK TO BE PERFORMED

4. Respondent agrees to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and DTSC-approved work plans, and in a manner consistent with the attached Scopes of Work and the applicable DTSC and the United States Environmental Protection Agency (USEPA) guidance documents.

#### INTERIM MEASURES (IM)

5.1. Respondent shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. Within ninety (90) days of the effective date of this Consent Agreement, Respondent shall submit a Current Conditions Report to DTSC. The Current Conditions Report is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 4. The Current Conditions Report shall contain an assessment of interim measures. The assessment must include both previously implemented interim measures and other interim measures that could be implemented at the Facility. The assessment must also identify any additional data needed for making decisions on interim measures. This new data or information shall be collected during the early stages of the RCRA Facility Investigation. DTSC will review the Respondent's assessment and determine which interim measures, if any, Respondent will implement at the Facility. If deemed appropriate by DTSC, such determination may be deferred until additional data are collected.

5.3. Within ninety (90) days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Work plan for the implementation of the approved Interim Measures ("IM Work plan"), if required. The IM Work plan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. The IM Work plan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Work plan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1.

5.4. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not

previously identified, Respondent shall notify DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within ten (10) days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within sixty (60) days of receiving DTSC's written request, Respondent shall submit to DTSC an IM Work plan for approval. The IM Work plan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Work plan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Work plan.

5.5. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within sixty (60) days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Work plan that identifies Interim Measures that will mitigate the threat. The IM Work plan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Work plan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Work plan.

5.6. All IM Work plans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.7. Concurrent with the submission of an IM Work plan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan, Attachment 2.

5.8. Concurrent with the submission of an IM Work plan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

#### RCRA FACILITY INVESTIGATION (RFI)

6.1. Within ninety (90) days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Current Conditions Report and a Work plan for a RCRA Facility Investigation ("RFI Work plan"). The Current Conditions Report

and RFI Work plan are subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 4. DTSC will review the Current Conditions Report and RFI Work plan and notify Respondent in writing of DTSC's approval or disapproval.

6.2. The RFI Work plan shall detail the methodology to: (1) gather data needed to make decisions on interim measures/stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the RFI Work plan.

6.3. Respondent shall submit a RFI Report to DTSC for approval in accordance with DTSC-approved RFI Work plan schedule. The RFI Report shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 4. If there is a phased investigation, separate RFI Reports and a report that summarizes the findings from all phases of the RFI must be submitted to DTSC. DTSC will review the RFI Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a RFI Work plan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2. If Work plans for both an IM and RFI are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.

6.5. Respondent shall submit a RFI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the RFI. The RFI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved RFI Work plan. DTSC will review the RFI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the RFI Summary Fact Sheet, Respondent shall mail the approved RFI Summary Fact Sheet to all individuals on the Facility mailing list established pursuant to Title 22, Cal. Code Regs. Section 66271.9(c)(1)(D), within fifteen (15) calendar days of receipt of written approval.

6.6. Concurrent with the submission of a RFI Work plan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, Respondent shall prepare a Public Participation Plan.

#### RISK ASSESSMENT

7. Based on the information available to DTSC,

Respondent may be required to conduct a Risk Assessment to evaluate potential human health risk and ecological risk and to establish site-specific action levels and cleanup standards. If DTSC determines that a Risk Assessment is required, Respondent shall submit to DTSC for approval a Risk Assessment Work plan within ninety (90) days of receipt of DTSC's determination. Respondent shall submit to DTSC for approval a Risk Assessment Report in accordance with DTSC-approved Risk Assessment Work plan schedule.

#### CORRECTIVE MEASURES STUDY (CMS)

8.1. Respondent shall prepare a Corrective Measures Study, if contaminant concentrations exceed human health-based or ecologically-based action levels established by the DTSC-approved Risk Assessment Report if one is required under this Consent Agreement, or if DTSC otherwise determines that the contaminant releases pose a potential threat to human health or the environment.

8.2. Within ninety (90) days of DTSC's approval of the RFI Report (or Respondent's receipt of a written request from DTSC), Respondent shall submit a CMS Work plan to DTSC. The CMS Work plan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5.

8.3. The CMS Work plan shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the Facility. The CMS Work plan shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

8.4. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Work plan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study Work plan, or Respondent's justification for not proposing a treatability study.

8.5. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Work plan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

#### REMEDY SELECTION

9.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

9.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise

the CMS Report and/or perform additional corrective measures studies.

9.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

#### CORRECTIVE MEASURES IMPLEMENTATION (CMI)

10.1. Within ninety (90) days of Respondent's receipt of notification of DTSC's selection of the corrective measures, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Work plan. The CMI Work plan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

10.2. Concurrent with the submission of a CMI Work plan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2.

10.3. Concurrent with the submission of a CMI Work plan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

10.4. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Work plan, Respondent shall submit to DTSC the documents listed below. These documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

- o Operation and Maintenance Plan
- o Draft Plans and Specifications
- o Construction Work plan
- o Corrective Measures Completion Report

10.5. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

10.6. As directed by DTSC, within ninety (90) days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, financial test, or corporate guarantee as described in California Code of Regulations, Title 22, Section 66264.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondent is unable or unwilling to undertake the required actions.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT

11. DTSC must comply with the California Environmental

Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

#### DTSC APPROVAL

12.1. Respondent shall revise any Work plan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date as agreed to by the parties. Revised submittals are subject to DTSC's approval or disapproval.

12.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved Work plan in accordance with the schedule and provisions contained therein.

12.3. Any DTSC approved Work plan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

12.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

#### SUBMITTALS

13.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the 15th day of the month when reports are due. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

13.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

13.3. The certification required by paragraph 13.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly

gathered and evaluated the information submitted.

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

13.4. Respondent shall provide two copies of all documents, including but not limited to, work plans, reports, and correspondence of 15 pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

13.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

#### PROPOSED CONTRACTOR/CONSULTANT

14. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within fourteen (14) days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement. DTSC may disapprove of Respondent's contractor and/or consultant.

#### ADDITIONAL WORK

15. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved work plans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit a Work plan to DTSC for the additional work. Such Work plan shall be submitted to DTSC within thirty (30) days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a Work plan, Respondent shall implement it in accordance with the provisions and schedule contained therein.

The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

#### QUALITY ASSURANCE

16.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Work plans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved work plans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

16.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable work plans.

#### SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

17.2. Respondent shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any Work plan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

17.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

17.4 Respondent may assert a business confidentiality claim covering all or any part of any information submitted to DTSC pursuant to this Consent Agreement as provided by applicable state or federal laws or regulations. Respondent further agrees not to assert any confidentiality claim with regard to any physical or analytical data generated as part of the work to be performed under this Consent Agreement.

#### ACCESS

18.1 Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such

persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

18.2 To the extent that work being performed pursuant to this Consent Agreement must be done beyond the Respondent's property boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Consent Agreement within 45 days of approval of any workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a letter by certified mail from the Respondent to the present owners of such property requesting an access agreement to permit Respondent and DTSC and its authorized representatives to access such property and offering the payment by Respondent of reasonable sums of money in consideration of granting access. Any such access agreement shall provide access to DTSC, its representatives, Respondent and Respondent's consultants, agents, employees or representatives. In the event that an agreement for access is not obtained within 45 days of approval of any workplan for which access is required, or the date that the need for access becomes known to Respondent, Respondent shall notify DTSC in writing with 14 days thereafter regarding both Respondent's efforts to obtain access and its failure to obtain such agreements. DTSC may, in its discretion, assist Respondent in obtaining access.

18.3 Nothing in this Consent Agreement shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective action including corrective action beyond the facility boundary. If Respondent uses best efforts to obtain access and is unable to do so, DTSC will assert its authority under the Health and Safety code to obtain access. If DTSC should fail to obtain such access, Respondent's obligation under this Consent Agreement with respect to such offsite areas shall be deferred until such access is obtained.

18.4 Nothing in this Consent Agreement limits or otherwise affects DTSC's right of access and entry pursuant to applicable state or federal laws or regulations.

#### RECORD PRESERVATION

19.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing ninety (90) days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Chief  
Facility Permitting Branch

Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

19.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

19.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility or at a location agreed to by the parties to afford ease of access by DTSC and its representatives.

#### DISPUTE RESOLUTION

20.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

20.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

20.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Northern California Facility Permitting Branch, Department of Toxic Substances Control, with a copy to DTSC Project Coordinator. The written objection must be mailed to the Branch Chief within fourteen (14) days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

20.4. DTSC and Respondent shall have fourteen (14) days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

20.5. After the formal discussion period, DTSC will provide the Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by Chief, Facility Permitting Branch, Department of Toxic Substances Control, Northern California or his/her designee.

20.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work to be performed under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any

other compliance obligation or deadline required pursuant to this Consent Agreement.

20.7 The parties agree that notwithstanding these Dispute Resolution procedures, Respondent reserves the right under California law to seek judicial review of any final agency decision or action by DTSC with respect to the approval or implementation of any work or other requirement which Respondent is required to perform under this Consent Agreement.

#### RESERVATION OF RIGHTS

21.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

21.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

21.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

21.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

21.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that DTSC's approval of any Work plan, plan, and/or specification does not constitute a warranty or representation that the work plans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not

relieve Respondent of its obligations to comply with HSC or any other applicable local, state, or federal law or regulation.

#### OTHER CLAIMS

22. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation 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 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

#### COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

23. Respondent shall comply with all applicable waste charge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

#### OTHER APPLICABLE LAWS

24. All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### REIMBURSEMENT OF DTSC'S COSTS

25.1. Respondent shall pay DTSC's reasonable oversight costs incurred in the implementation of this Consent Agreement.

25.2 An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$107,784.00. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit A and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

25.3 Respondent shall make an advance payment to DTSC in the amount of \$49,263 within thirty (30) days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within one hundred twenty (120) days after the execution of the Acknowledgment of Satisfaction pursuant to Section 27 of this Consent Agreement.

25.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within sixty (60) days, the amount is subject to interest as provided by HSC Section 25360.1.

25.5. DTSC will retain all costs records associated

with the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support the Department's cost determination available for inspection upon request, as provided by the Public Records Act.

25.6. Any dispute concerning costs pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

25.7. All payments shall be made within thirty (30) days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit  
Department of Toxic Substances Control  
P. O. Box 806  
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

#### MODIFICATION

26.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

26.2. Any requests for revision of an approved Work plan requirement must be in writing. Such requests must be timely and provide justification for any proposed Work plan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Northern Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Consent Agreement.

#### EXTENSION

27. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Agreement, Respondent may, prior to the expiration of time, request an extension of time in writing. The extension request shall include a justification for the delay. If DTSC determines that good cause exists for an extension, such as due to an unforeseeable event beyond Respondent or its contractor's control including Respondent's consultants and contractors, it will grant the request and specify in writing a new date or schedule. Any disputes concerning an extension of time shall be resolved in accordance with the Dispute Resolution provisions of this Consent Agreement.

## TERMINATION AND SATISFACTION

28. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

## DISCLAIMER

29.1 Subject to the provisions of this Paragraph, Respondent consents and agrees to the terms of this Consent Agreement and to perform and comply with all provisions herein. By signing this Consent Agreement, Respondent does not admit, accept, or acknowledge any liability or fault with conditions at or arising from the Facility. Furthermore, by signing this Consent Agreement, Respondent does not waive, except for its consent to jurisdiction in any proceeding to enforce this Consent Agreement, any claims or defense that it might have raised to this Consent Agreement or that it might raise in any other judicial or administrative proceeding brought by DTSC, the State of California, or any other governmental agency or persons.

29.2 This Consent Agreement is not to be construed and will not be construed to any extent or for any purposes, however and whenever arising, as an admission of liability or violation of any private contract or instrument or of any local, state or federal ordinance, rule, regulation or statute, directly or indirectly, on the part of the Respondent. DTSC and Respondent further agree by signing this Consent Agreement that this Consent Agreement shall not be admitted into evidence or used in any way, directly or indirectly, in any civil or criminal judicial or administrative proceeding or in any other manner against Respondent for any purpose other than in further proceedings by the parties hereto to enforce the terms of this Consent Agreement, provided, however, that nothing herein shall preclude Respondent or DTSC from using the Consent Agreement or the fact of its entry in defense of any suit or in any other proceeding.

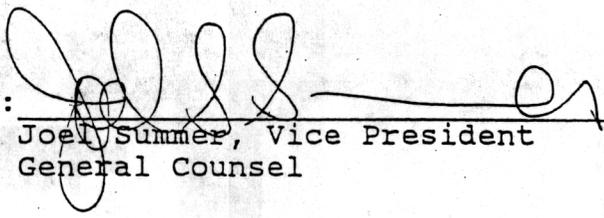
## EFFECTIVE DATE

30. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

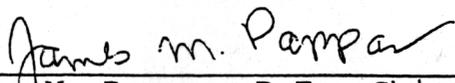
## SIGNATORIES

31. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: 2/7/02

BY:   
Joel Summer, Vice President  
General Counsel

DATE: 2/14/02

BY:   
James M. Pappas, P.E., Chief  
Land Disposal Branch  
Hazardous Waste Management Program

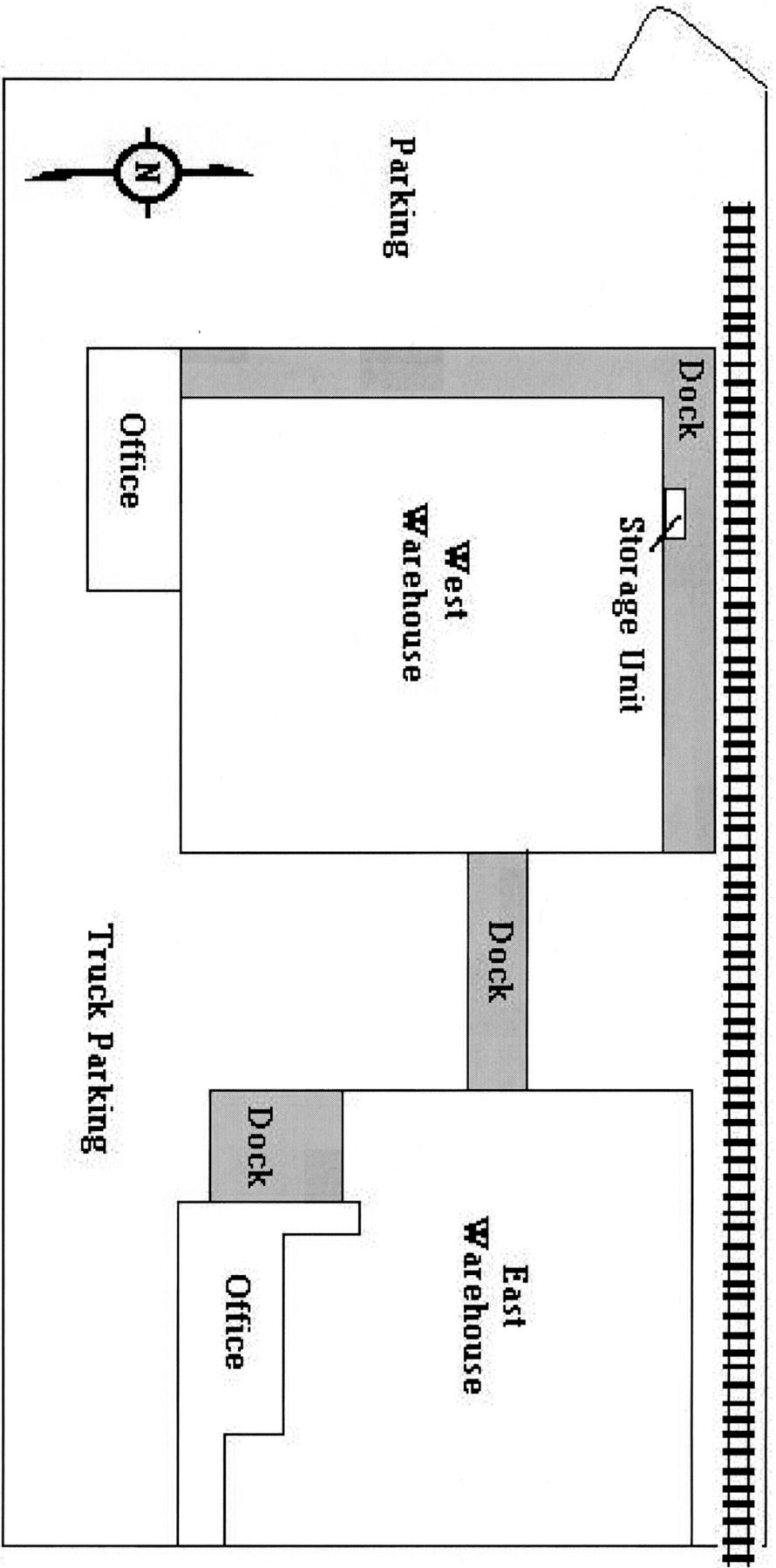


Fig. 1

Project Title: Vopak Jillson Street  
 Applicant's Name: Vopak USA, Inc.  
 Contact: George Sylvester  
 Billing Address: 6100 Carillen Point, Kirkland, Washington  
 Contact Tel. #: (303) 8387260

December 14, 2001

**EXHIBIT A (pg 1)**

**COST ESTIMATE FOR RFI WORKPLAN REVIEW & OVERSIGHT FOR FIRST CALANDER YEAR AFTER THE EFFECTIVE DATE OF THE CONSENT AGREEMENT.**

Code	Classification	Staff Hours	HWMP Hourly Rate + Indirect @ 196.54%	Staff Cost	Totals
<b>PERMITTING</b>					
3564	Haz. Sub. Scientist	35.0	107	\$3,745	
3726	Haz. Sub. Engineer		119	0	
3566	Sup. Haz. Sub. Sci. I	4.0	124	496	
3723	Sup. Haz. Sub. Sci. II		142	0	
3724	Sup. Haz. Sub. Eng. I		131	0	
3723	Sup. Haz. Sub. Eng. II	1.0	143	143	
1139	Office Technician (T)	10.0	60	600	
	Total				\$4,984
<b>REGIONAL CHEMISTRY SUPPORT</b>					
3565	Sr. Haz. Sub. Scientist	8.0	124	992	
	Total				992
<b>REGIONAL GEOLOGY SUPPORT</b>					
3728	Haz. Sub. Eng. Geologist	100.0	113	11,300	
3730	Sup. Haz. Sub. Eng. Geo. I	1.0	131	131	
	Total				11,431
<b>OFFICE OF SCIENTIFIC AFFAIRS</b>					
7978	Staff Toxicologist		146	0	
7984	Senior Toxicologist		153	0	
	Total				0
<b>OFFICE OF LEGAL COUNSEL</b>					
5778	Staff Counsel	4.0	149	596	
	Total				596
<b>PUBLIC PARTICIPATION</b>					
5373	Public Participation, Spec.	60.0	101	6,060	
5372	Public Participation, Sup.	5.0	110	550	
	Total				6,610
<b>PROGRAM AUDITS &amp; ENVIRONMENTAL ANALYSIS</b>					
4711	Assoc. Env. Planner		106	6,360	
4713	Sr. Env. Planner		126	0	
	Total				6,360
<b>OTHER</b>					
3856	Assoc. Industrial Hygienist	5.0	112	560	
3887	Air Pollution Specialist		108	0	
3724	Sup. Haz. Sub. Eng. I (ESU)	1.0	131	131	
	Total				691
				-----	-----
				\$31,664	\$31,664

Project Title: Vopak Jillson Street  
 Applicant's Name: Vopak USA, Inc.  
 Contact: George Sylvester  
 Billing Address: 6100 Carillen Point, Kirkland, Washington  
 Contact Tel. #: (303) 8387260

**EXHIBIT A (pg2)**

**COST ESTIMATE FOR RFI OVERSIGHT & REPORT REVIEW FOR FIRST CALANDER YEAR AFTER THE EFFECTIVE DATE OF THE CONSENT AGREEMENT.**

Code	Classification	Staff Hours	HWMP Hourly Rate + Indirect @ 196.54%	Staff Cost	Totals
<b>PERMITTING</b>					
3564	Haz. Sub. Scientist	60.0	107	\$6,420	
3726	Haz. Sub. Engineer		119	0	
3566	Sup. Haz. Sub. Sci. I	8.0	124	992	
3723	Sup. Haz. Sub. Sci. II		142	0	
3724	Sup. Haz. Sub. Eng. I		131	0	
3723	Sup. Haz. Sub. Eng. II	1.0	143	143	
1139	Office Technician (T)	10.0	60	600	
	<b>Total</b>				<b>\$8,155</b>
<b>REGIONAL CHEMISTRY SUPPORT</b>					
3565	Sr. Haz. Sub. Scientist	8.0	124	992	
	<b>Total</b>				<b>992</b>
<b>REGIONAL GEOLOGY SUPPORT</b>					
3728	Haz. Sub. Eng. Geologist	12.0	113	1,356	
3730	Sup. Haz. Sub. Eng. Geo. I		131	0	
	<b>Total</b>				<b>1,356</b>
<b>OFFICE OF SCIENTIFIC AFFAIRS</b>					
7978	Staff Toxicologist		146	0	
7984	Senior Toxicologist		153	0	
	<b>Total</b>				<b>0</b>
<b>OFFICE OF LEGAL COUNSEL</b>					
5778	Staff Counsel		149	0	
	<b>Total</b>				<b>0</b>
<b>PUBLIC PARTICIPATION</b>					
5373	Public Participation, Spec.	40.0	101	4,040	
5372	Public Participation, Sup.	1.0	110	110	
	<b>Total</b>				<b>4,150</b>
<b>PROGRAM AUDITS &amp; ENVIRONMENTAL ANALYSIS</b>					
4711	Assoc. Env. Planner		106	4,240	
4713	Sr. Env. Planner		126	0	
	<b>Total</b>				<b>4,240</b>
<b>OTHER</b>					
3856	Assoc. Industrial Hygienist	24.0	112	2,688	
3887	Air Pollution Specialist		108	0	
3724	Sup. Haz. Sub. Eng. I (ESU)	1.0	131	131	
	<b>Total</b>				<b>2,819</b>
				\$21,712	\$21,712

Project Title: Vopak Jillson Street  
 Applicant's Name: Vopak USA, Inc.  
 Contact: George Sylvester  
 Billing Address: 6100 Carillen Point, Kirkland, Washington  
 Contact Tel. #: (303) 8387260

**EXHIBIT A (pg 3)**

INTERIM MEASURES WORKPLAN REVIEW & OVERSIGHT FOR FIRST CALANDER YEAR AFTER THE EFFECTIVE DATE OF THE CONSENT AGREEMENT.

Code	Classification	Staff Hours	HWMP Hourly Rate + Indirect @ 196.54%	Staff Cost	Totals
<b>PERMITTING</b>					
3564	Haz. Sub. Scientist	80.0	107	\$8,560	
3726	Haz. Sub. Engineer		119	0	
3566	Sup. Haz. Sub. Sci. I	40.0	124	4,960	
3723	Sup. Haz. Sub. Sci. II		142	0	
3724	Sup. Haz. Sub. Eng. I		131	0	
3723	Sup. Haz. Sub. Eng. II	2.0	143	286	
1139	Office Technician (T)	12.0	60	720	
	<b>Total</b>				<b>\$14,526</b>
<b>REGIONAL CHEMISTRY SUPPORT</b>					
3565	Sr. Haz. Sub. Scientist	5.0	124	620	
	<b>Total</b>				<b>620</b>
<b>REGIONAL GEOLOGY SUPPORT</b>					
3728	Haz. Sub. Eng. Geologist	76.0	113	8,588	
3730	Sup. Haz. Sub. Eng. Geo. I	3.0	131	393	
	<b>Total</b>				<b>8,981</b>
<b>OFFICE OF SCIENTIFIC AFFAIRS</b>					
7978	Staff Toxicologist		146	0	
7984	Senior Toxicologist		153	0	
	<b>Total</b>				<b>0</b>
<b>OFFICE OF LEGAL COUNSEL</b>					
5778	Staff Counsel	4.0	149	596	
	<b>Total</b>				<b>596</b>
<b>PUBLIC PARTICIPATION</b>					
5373	Public Participation, Spec.	20.0	101	2,020	
5372	Public Participation, Sup.	0.0	110	0	
	<b>Total</b>				<b>2,020</b>
<b>PROGRAM AUDITS &amp; ENVIRONMENTAL ANALYSIS</b>					
4711	Assoc. Env. Planner		106	2,120	
4713	Sr. Env. Planner		126	0	
	<b>Total</b>				<b>2,120</b>
<b>OTHER</b>					
3856	Assoc. Industrial Hygienist	6.0	112	672	
3887	Air Pollution Specialist		108	0	
3724	Sup. Haz. Sub. Eng. I (ESU)	0.0	131	0	
	<b>Total</b>				<b>672</b>
				\$29,535	\$29,535

Project Title: Vopak Jillson Street  
Applicant's Name: Vopak USA, Inc.  
Contact: George Sylvester  
Billing Address: 6100 Carillen Point, Kirkland, Washington  
Contact Tel. #: (303) 8387260

EXHIBIT A (pg 4)

RECAP:

COST ESTIMATE FOR RFI WORKPLAN REVIEW & OVERSIGHT FOR FIRST CALANDER YEAR AFTER THE EFFECTIVE DATE OFTHE CONSENT AGREEMENT.		\$31,664
COST ESTIMATE FOR RFI OVERSIGHT & REPORT REVIEW		\$21,712
INTERIM MEASURES WORKPLAN REVIEW & OVERSIGHT		\$29,535
	SUBTOTAL	<u>\$82,911</u>
PROJECT MANAGEMENT @ 15%		\$12,437
CONTINGENCY @ 15%		\$12,437
	TOTAL:	<u>\$107,784</u>