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April 22, 2010

VIA U.S. MAIL and ELECTRONIC MAIL

Mr. Benjamin H. Grumbles  
Director  
Arizona Department of Environmental Quality  
1110 West Washington Street  
Phoenix, Arizona 85007

RECEIVED  
APR 2010  
Remedial Projects  
Unit

**Re: Roosevelt Irrigation District's (RID) Response to Comments from Potentially Responsible Parties at the March 22, 2010 ADEQ Meeting and March 23, 2010 CAB Meeting on RID's Early Response Action**

Dear Mr. Grumbles:

The Roosevelt Irrigation District (RID) has reviewed the comments offered by potentially responsible parties (PRPs) at the March 22, 2010 meeting with the Arizona Department of Environmental Quality (ADEQ) and the March 23, 2010 Community Advisory Board (CAB) meeting regarding RID's Early Response Action (ERA) Work Plan that was submitted to ADEQ and supplemented by RID to address ADEQ technical comments on October 5, 2009 and February 3, 2010, respectively. The ERA is necessary to mitigate the impacts and threatened impacts on RID's production wells from the widespread groundwater contamination in and from the West Van Buren Area (WVBA) and West Central Phoenix Area (WCPA) Water Quality Assurance Revolving Fund (WQARF) sites and the Motorola 52<sup>nd</sup> Street (M52) federal Superfund Site and to mitigate the public health issues associated with that contamination. Contrary to the erroneous information contained in the PRP comments, RID has proposed an ERA that is not only consistent with the requirements of state law, but RID's proposed ERA is consistent with other remedial actions being pursued at other WQARF and federal Superfund Sites in Arizona.

RID understands why the PRPs are opposed to RID's proposed ERA, given that the PRPs have had documented "releases" at their facilities of the hazardous substances that will be addressed by the ERA. Under federal law, these documented "releases"

classify the parties as PRPs, subject to joint and several liability for the response costs incurred by RID, including the costs relating to the ERA.

In their comments, the PRPs inaccurately assert that an ERA is only permissible to address an unacceptable public risk to human health, welfare and the environment, that an ERA should not be approved until after additional source control activities and a feasibility study have been performed, that the RID-proposed ERA only addresses RID's business interests, that RID does not have the water rights to undertake the ERA, that the proposed ERA will negatively impact small Arizona businesses, and that the proposed ERA is inconsistent with the WQARF program. Based on these false allegations and the significant amount of erroneous information contained in the PRPs comments, RID is compelled to provide this response in order to correct the record and inform all interested parties of the applicable laws, which have been completely disregarded in the PRP comments.

### **Risk Assessment and Exposure Evaluation**

At the March 22, 2010 meeting at ADEQ, the PRPs falsely asserted that an ERA is authorized only to address current risks to public health, welfare and the environment. The PRPs compounded this legal misrepresentation by claiming existing data do not support RID's factual contention that an ERA is necessary to abate a current public health risk. Based on these false legal and factual statements, the PRPs erroneously concluded that if there are no public health risks to compel an ERA, then ADEQ should deny approval of RID's proposed ERA.

RID has consistently stated that the proposed ERA is necessary to expediently address groundwater contamination that adversely impacts RID water supply wells in the WVBA and to mitigate risks to public health, welfare, and the environment. Contrary to PRP assertions, the WQARF statute expressly authorizes and deems an ERA "necessary" as a matter of law if water supply wells are impacted or are threatened to be impacted by groundwater contamination.<sup>1</sup> Also contrary to PRP assertions, the public is being exposed to volatile organic compounds (VOCs) present in the contaminated groundwater that is pumped from RID's wells into the RID canals. The lower income community that surrounds the RID water distribution system uses the surface water in the RID canals, without authorization, for swimming, bathing and even drinking. RID has begun to mitigate this risk to public health by converting the open segments of the Salt Canal and RID laterals to buried pipeline. However, RID's main canal is open and accessible to the unauthorized use of the local community. Due to the extended length of the RID main canal, it would be costly to convert the main canal to pipeline, which is why the proposed ERA is necessary to mitigate the current risk to public health, welfare and the environment.

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<sup>1</sup> Ariz. Admin. Code R18-16-405(I).

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The public also is being exposed to hazardous air pollutants that volatilize from the VOC-contaminated groundwater into the ambient air. ADEQ studies indicate a substantial amount of the VOCs in the contaminated groundwater is released to the air as the water discharges from RID wells and is conveyed in open canals. According to 2009 data, ~ 3,400 pounds of VOCs in the contaminated groundwater were released into the environment in the WVBA. In comparison, 2009 data indicates that contaminated groundwater in Scottsdale, which is extracted as part of the regional North Indian Bend Wash (NIBW) federal Superfund Site remedy, contained ~ 2,400 pounds of VOCs. The only difference between the WVBA and Scottsdale is that all of the VOCs in Scottsdale were treated because there is a remedy in place to remove VOCs from the air and water. The RID proposed ERA would implement a remedy to begin treating the contaminated groundwater in the WVBA to remove the VOCs from the air and water.

Contrary to PRP assertions, EPA and ADEQ required treatment at the NIBW federal Superfund Site in Scottsdale to mitigate the transfer of VOCs from groundwater to air, despite risk assessments that demonstrated that there were no unacceptable public health risks if VOCs were released to the air without treatment. EPA justified this position by indicating that risk is not the only basis of this decision and because state and local requirements mandate the control of VOC emissions to the air.<sup>2</sup> Likewise, RID's proposed ERA will mitigate the transfer of VOCs from the contaminated groundwater into the air in order to protect public health and to comply with the state and local requirements. In fact, ADEQ has approved a workplan that is part of a proposed ERA for a pump and treat system to address VOC contamination in groundwater at the 56<sup>th</sup> Street and Earll Drive WQARF site. This workplan that is part of a proposed ERA was approved by ADEQ even though a completed Public Health Consultation by the Arizona Department of Health Services determined that there was no public health threat associated with the use of the contaminated water for irrigation purposes.

#### **Source Identification and Control:**

During the March 22, 2010 meeting at ADEQ, the PRPs indicated that, prior to an ERA, it is important to first perform source control to cutoff continuing contaminant discharges to groundwater. To date, source control activities have been completed at 5 facilities as a result of ADEQ action. The PRPs request that ADEQ continue to identify all PRPs associated with the groundwater contamination in the WVBA and require source control activities at those facilities. The PRPs believe that site-specific source control activities performed by ADEQ would be a significant factor to determine the scope, cost and time frame for a regional groundwater remedy during the feasibility study. Therefore, PRPs recommended that ADEQ, with the support of a Technical Working Group, should take the lead in completing its search for PRPs and require source control activities at facilities where needed.

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<sup>2</sup> Letter from Keith Takata to Michael Loch and Brian Israel (November 14, 2007); Letter from Amanda Stone to Keith Takata (November 14, 2007).

Source control activities that target facilities that continue to be a source of soil and groundwater contamination in WVBA may enhance mass removal, but source control activities do not restore the historical and current contamination of RID's water supply, which is one of the principal objectives of RID's proposed ERA. Although RID agrees with PRPs that the identification and removal of contamination sources should be conducted by ADEQ and PRPs, source control activities will have little impact on the cost and time frame (likely 50+ years) of a final regional groundwater remedy. The contamination associated with the WVBA is the result of decades of releases that have occurred at PRP facilities, the presence of multiple dense nonaqueous phase liquids (DNAPLs) sites that cause persistent releases of contaminants to the groundwater, highly transmissive groundwater conditions in heterogeneous aquifers, and the large volumes of groundwater that flow and are extracted throughout the WQARF site.

The two sites identified by PRPs, where soil and groundwater source control activities have allegedly been completed, exemplify the limitations of source control. As a result of the very high VOC concentrations at the ALSCO and Dolphin PRP facilities, it is likely that DNAPLs are present and, therefore, sites such as these will not be completely cleaned up for a very long, indeterminate time. Likewise, the effectiveness of groundwater cleanups at specific PRP facilities, which may pump 50-150 gpm, is very limited. For example, contrast the ALSCO ERA that pumped 118 million gallons and removed only 24 pounds of VOCs, with RID's wells in WVBA which pumped nearly 77,000 acre-feet of groundwater, or 25 billion gallons in 2009, and released ~ 3400 pounds of VOCs.

RID strongly disagrees with the PRP assertion that RID's ERA should be denied so that ADEQ can complete its identification of PRPs and pursue source control activities. Based on the 20 years of studying the WVBA, ADEQ's draft Remedial Investigation Report for the WVBA WQARF Site has sufficient data to identify a sufficient number of PRPs responsible for the cleanup of the regional groundwater contamination. Also, there is public data that identify other PRP facilities within the WCP WQARF Site and the M52 federal Superfund Site that are potentially responsible for the cleanup of the regional groundwater contamination in the WVBA. Additionally, source control activities will be less effective in remediating the contaminated groundwater because of the widespread contamination from numerous PRP facility sources in a highly transmissive and productive alluvial aquifer. In short, the PRPs' recommendations will not protect public health, welfare or the environment from current risks associated with the PRPs' groundwater contamination nor will they timely protect or restore RID's wells and water supply

Finally, ADEQ should not deny RID's proposed ERA, which is authorized by law, in order to implement ADEQ's own regional groundwater remedy. ADEQ's limited authority to recover only a PRPs' proportionate contribution of ADEQ's response costs<sup>3</sup> and ADEQ's lack of funding to pay the contribution from "orphan" PRPs will prevent a

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<sup>3</sup> A.R.S. 49-285.

final remedy from ever being implemented to address the impacts to RID's wells and water supply and current risks to public health, welfare and the environment.

**Feasibility Study for Final Remedy:**

During the March 22, 2010 meeting at ADEQ, the PRPs recommended that, in lieu of RID's proposed ERA, ADEQ should take the lead under the WQARF program to select and implement a final regional remedy for the groundwater contamination in the WVBA. Prior to the selection and implementation of a final remedy under the WQARF program, a feasibility study must be performed to evaluate and select an appropriate groundwater remedy for WVBA. The PRPs offered to fund the feasibility study for ADEQ at a cost estimated by the PRPs to be \$300,000 under the following conditions: (1) ADEQ must deny the RID proposed ERA, and (2) a Technical Working Group would be created, consisting of PRPs from the WVBA and WCP WQARF Sites and the M52 federal Superfund Site. The PRPs claimed that the development of the feasibility study will be an open, transparent, and non-impassioned process where the PRPs can share data and coordinate consistent regional groundwater modeling efforts and remedial approaches. In fact, the PRPs believe, based on their "collective experience at other sites," that the selection of the final remedy could occur within 2 years.

RID is very concerned with the PRPs blatant effort to improperly influence ADEQ's decision on RID's proposed ERA by offering ADEQ financial resources as a "quid pro quo" for ADEQ denying RID's ERA. This is illustrative of the unreasonableness of the PRPs recommendations and the unwillingness of the PRPs to address their legal responsibilities or the risks and damages caused by their contamination.

Furthermore, RID is the only party to have entered into a written agreement with ADEQ to conduct a feasibility study, which RID intends to conduct on a parallel track with the implementation of the proposed ERA. However, as stated in prior RID submittals to ADEQ, RID welcomes the participation of all interested stakeholders, including PRPs, in the feasibility study process to develop a final remedy that will address the impact to RID's wells and mitigate the current risks to public health, welfare and the environment. RID intends to initiate the feasibility study within 60 days after ADEQ's approval of the proposed ERA.

RID further believes that the statements concerning a PRP-funded feasibility study is commendable but disingenuous, due to the obvious conflict of interests in having the PRPs select the final regional remedy for which the PRPs will be liable. Likewise, RID is unsure of how the PRP feasibility process will be non-impassioned when the PRPs will have to allocate individual liability among themselves, including response costs related to the final regional remedy, in a final contribution action. History would suggest that PRP attempts to successfully work together toward an effective remedy for WVBA is limited at best. In fact, a WVBA technical working group, including a handful of the currently identified PRPs, was established in the early 1990's to perform the same

activities requested by the PRPs in the March 22 meeting; however, that WVBA technical working group split up after 3 years without any significant progress. Although there have been other remediation projects in Arizona, the 14 years since the creation of that technical working group has produced minimal progress toward the remediation of the WVBA. The only difference today is that there are more PRPs, including some of the PRPs that participated in the prior technical working group, that reportedly are now willing to address the groundwater contamination by creating another technical working group to fund and develop a feasibility study, without any commitment to fund or implement the selected remedy.

RID believes that PRP expectations to complete a feasibility study in less than 2 years is hardly realistic in terms of the dynamics of the WVBA site. In fact, it took 5 years at the NIBW federal Superfund Site to complete the feasibility study process and select the final remedy with only 3 PRPs compared to the 80+ PRPs associated with the WVBA. Also, RID believes that the PRPs' only motivation to complete the feasibility study is to limit the scope and cost of the final remedy, which would limit the PRPs' potential liability under a cost recovery action. Moreover, the PRP feasibility study would only result in a "proposed" remedial action plan and would shift the burden to ADEQ to implement the "proposed" remedy.

In order to implement the "proposed" remedy, ADEQ would have to completely fund the identification of all PRP's and gather sufficient evidence to prove the individual allocation of each PRP's liability if ADEQ wanted to recover its response costs to implement the "proposed" remedy. ADEQ would be responsible to pay the implementation costs that cannot be proven attributable to individual PRPs and all contributing "orphan" shares. Such liability for ADEQ would be significant due to the fact that the WVBA WQARF Site is a "toxic soup" and the existing data is insufficient to prove individual allocations. Therefore, as a result of ADEQ's budget and funding limitations, it is unclear when ADEQ will have sufficient funding to implement the "proposed" remedy, to establish sufficient evidence to prove individual PRP allocations or to fund the millions of dollars associated with "orphan" shares.

The PRPs' conditional offer to provide \$300,000 to fund a feasibility study only if ADEQ denies RID's proposed ERA is wholly inadequate given the scope of work. It is highly likely that \$300,000 would be insufficient to perform the groundwater modeling task alone. According to the PRP's feasibility study approach, it will be necessary to engage an expert modeler to synthesize the conflicting data from each PRP's technical consultant and to refine the WVBA conceptual model for an independent groundwater modeling effort.

Finally, according to the outline of the PRPs' feasibility study remedial strategies, the PRPs intend to emphasize the identification and implementation of targeted remediation at "hot spots" and "focused pumping in core areas." However, the PRP outline fails to address the applicable statutory and regulatory requirements of the WQARF program, including the requirement to protect, at a minimum, the interests of

water providers and well owners impacted or threatened by the releases of hazardous substances. Therefore, as discussed in RID's January 20, 2010 letter to ADEQ, state law expressly requires any and all remedial measures, evaluated under a PRP feasibility study, to protect the quantity and quality of the groundwater for RID's unrestricted and maximum beneficial use.

#### **ERA vs. Feasibility Study:**

During the March 22, 2010 meeting at ADEQ and the March 23, 2010 WVBA CAB meeting, the PRPs wanted ADEQ and the public to believe that the only choice is between either the approval and implementation of RID's proposed ERA or a stakeholder process to develop a feasibility study that evaluates the options for a final remedy. This position was clearly demonstrated when the PRPs conditioned their \$300,000 funding of a feasibility study on ADEQ's denial of RID's proposed ERA. Likewise, the PRPs insisted that an ERA should not be approved prior to the completion of a feasibility study.

As discussed in RID's January 20, 2010 letter to ADEQ, the ERA is a remedial action pursued prior to the evaluation and selection of a final remedy pursuant to the WQARF statutes and regulations. The WQARF regulations make it clear that the ERA is not a final remedy and that an ERA may be "addressed, incorporated and modified as needed in the [final] remedy selected" pursuant to the WQARF statutes and regulations.<sup>4</sup> As stated before, RID has entered into a written agreement with ADEQ to implement an ERA and conduct a feasibility study. Contrary to PRP comments, ADEQ's decision is not between the proposed ERA or a feasibility study. In fact, RID intends to pursue a stakeholder process to develop a feasibility study within 60 days after ADEQ's approval of the proposed ERA.

Contrary to the PRPs' request that an ERA not be approved until after the feasibility study, ADEQ has approved a number of ERAs prior to the completion of a feasibility study, including the source control activities at PRP facilities within the WVBA. Additionally, ADEQ has approved a workplan prior to a remedial investigation report or feasibility study that allows a PRP to construct extraction and monitoring wells,<sup>5</sup> as part of a proposed ERA to pump VOC-contaminated groundwater and treat the extracted groundwater in a granulated activated carbon treatment system prior to discharging the treated water for irrigation use at a different WQARF site in Arizona.<sup>6</sup>

The only difference between RID's proposed ERA and the ERAs that ADEQ previously has approved is the party implementing the ERAs. To date, PRPs responsible for the "releases" that have impacted soil and groundwater have implemented the ERAs. Unfortunately, due to budget and resources constraints, ADEQ has been unable to require PRPs associated with the WVBA WQARF groundwater contamination to address the

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<sup>4</sup> A.A.C. R18-16-405.F.

<sup>5</sup> Letter from Tom DiDomizio to Freescale (CTS ID 131759) (March 21, 2005).

<sup>6</sup> Freescale's Early Response Action Process Presentation given to Community Advisory Board on January 11, 2007.

groundwater contamination that has impacted RID's wells and presents a risk to public health, welfare and the environment. Based on ADEQ's current budget constraints, ADEQ will not be able to require PRPs to address the groundwater contamination. Therefore, RID has voluntarily proposed an ERA to begin addressing the groundwater contamination and public health risks, while moving forward with the lengthy process to select and implement a final regional remedy.

#### **Water Infrastructure Project:**

During the March 22, 2010 meeting at ADEQ and the March 23, 2010 WVBA CAB meeting, the PRPs continued to suggest that RID's proposed ERA is merely a cover for RID to obtain funding for a new water infrastructure at the expense of the PRPs.

First, it is ridiculous that PRPs are portraying themselves as victims when the PRPs are "legally" responsible for groundwater contamination that has impacted RID's wells and operations and presents a current risk to human health, welfare and the environment. The PRPs have a "legal" obligation to pay the response costs to restore the quantity and quality of the groundwater that has been impacted by the documented releases of hazardous substances from PRP facilities.

Also, if the PRPs had reviewed RID's proposed ERA prior to their comments, the PRPs would have noticed that the proposed ERA does not demand any new infrastructure or funding to enable RID to provide drinking water to the West Valley. The purpose of the ERA is to protect and to restore RID's wells and water supply by removing VOC contamination to a level that would be acceptable for its maximum beneficial end use, which is required by state law and the WQARF program.

Contrary to PRP comments, RID has been transitioning from agricultural to residential land use, similar to the conversion that occurred with the Salt River Project in Phoenix and the Flowing Wells Irrigation District near Tucson. Cities and developers within RID's district lands have asked RID to provide a potable water supply. In fact, RID has existing agreements with the Town of Buckeye to provide a drinking water supply. Cities and developers within RID's district lands recognize that groundwater from RID's wells in the WVBA would be the preferred municipal water supply, but for the extensive VOC contamination, because the WVBA groundwater has substantially lower dissolved solids, hardness, and solutes such as nitrate and fluoride than the brackish groundwater in the Goodyear and Buckeye areas. As a result, the WVBA groundwater from RID's wells would provide large savings associated with inorganic water quality treatment costs.

Recognizing the water needs of the West Valley and the potential savings associated with the WVBA groundwater from RID's wells, RID proposed a "creative option" that would actually lower the total costs for the PRPs. RID believes that the "creative option" was a win-win for all interested parties: the WVBA contamination is remediated, PRPs limit their long-term liability under federal law and the West Valley



cities receive a cheaper drinking water supply. Unfortunately, the "creative option" has been dismissed by the PRPs. As a result, the proposed ERA will discharge the VOC-treated groundwater into the RID main canal to be used for irrigation purposes, an option that has been adopted by other WQARF and Superfund sites in Arizona, at least until the treated water can be delivered to the West Valley as a municipal water supply.

#### **RID'S Water Rights and Water End Uses:**

During the March 22, 2010 meeting at ADEQ and the March 23, 2010 CAB meeting, PRPs continued to assert that RID's water rights would expire and that RID does not have the authority to transport or "export" groundwater extracted from RID's wells to its service area in the West Valley.

It is inexcusable that the PRPs continue to deny what is substantiated under state water law and discussed in RID's letter to ADEQ dated January 20, 2010. State law clearly establishes that RID possesses unencumbered water rights, that the current and reasonably foreseeable end uses of the groundwater extracted by the RID wells include a water supply for both irrigation and drinking water end uses, and that RID has the legal right to continue transporting (*i.e.*, exporting) the groundwater extracted from its wells to its service area in the West Valley, which RID has been doing for over 80 years.

#### **Impacts to Small PRP Businesses:**

During the March 23, 2010 WVBA CAB meeting, PRPs and comments submitted on behalf of the PRPs asserted that RID's proposed ERA would cause a number of economic hardships on many smaller PRP businesses that could result in the loss of jobs and/or bankruptcy.

RID is aware of the economic realities that exist for many Arizona businesses; however, when businesses were thriving, not a single PRP volunteered to address the groundwater contamination that has, for decades, impacted or threatens to impact RID's wells and presents a current risk to public health, welfare and the environment. However, RID does not believe that the local community or RID should continue to bear the impacts and risks created by PRPs because Arizona businesses do not want to fulfill their "legal" responsibilities to clean up the groundwater contamination.

RID's proposed ERA would be a fraction of the cost of any alternative remedy proposed by the PRPs, ADEQ or the Environmental Protection Agency (EPA). Additionally, RID is spreading the economic impact among more than 80 PRPs, rather than singling out a few Arizona businesses. Although not included in PRP comments, RID has maintained a willingness to negotiate a reasonable settlement with any PRP based on all available information, including a PRP's ability to pay. RID has previously informed PRPs, including those that commented at the March 23, 2010 WVBA CAB meeting, that RID would consider a settlement that applies a PRP's potential insurance assets or a settlement permitted under the financial hardship settlement provisions in

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Ariz. Rev. Stat. 49-292.02, if the PRP qualifies. Based on RID's willingness to negotiate reasonable settlements and the availability of the WQARF financial hardship settlement provisions, RID does not believe that small PRP businesses will be forced into bankruptcy as a result of their "legal" obligation to clean up the groundwater contamination.

**ERA Inconsistent with Purpose of WQARF Program:**

During the March 23, 2010 CAB meeting, comments submitted on behalf of PRPs claim that RID's proposed ERA violates the purpose of the WQARF program, which was to keep Arizona businesses in operation, despite their "legal" responsibilities.

Contrary to these PRP comments, RID's proposed ERA is consistent with the overall goal of the WQARF program which is to provide for cost-effective solutions to clean up releases of hazardous substances that threaten public health and groundwater quality in the state. As discussed in RID's January 20, 2010 letter to ADEQ and RID's February 3, 2010 proposed ERA, there are no other reasonable, cost-effective, technically feasible alternatives that would be consistent with the applicable Arizona statutes and WQARF rules and policies. As explained in the same referenced RID submittals, the comments and recommendations submitted by the PRPs to ADEQ on the proposed ERA are contrary to the applicable WQARF statute and ADEQ and EPA policies. RID's proposed ERA is the most cost-effective because RID will be utilizing its existing wells, conveyances, rights of way and permits. Any alternative remedy proposed by the PRPs would be unreasonable because it would not satisfy all legal and technical requirements applicable to "remedial actions" under state law and the WQARF program. Any PRP alternative to RID's proposed ERA would be unreasonable and not cost effective because it would have to consider the costs for new wells, conveyances, rights of ways, permits, and damages to RID's wells and water supply. As stated before, RID's willingness to negotiate reasonable settlements with financially challenged PRPs and WQARF's applicable state financial hardship settlement provisions will ensure that Arizona businesses can fulfill their "legal" obligation to clean up the groundwater contamination without having to shutdown their operations.

**WQARF Remediation Requirements V. CERCLA Cost Recovery Action**

During the March 22, 2010 meeting at ADEQ and the March 23, 2010 WVBA CAB meeting, the PRPs continued to confuse RID's proposed remedial actions under WQARF and RID's cost recovery action under CERCLA.

The WVBA is a registered state WQARF site. As a state site, the Arizona WQARF program remediation requirements apply, and RID will conduct its remedial action pursuant to applicable WQARF program requirements (as well as consistent with the National Contingency Plan).

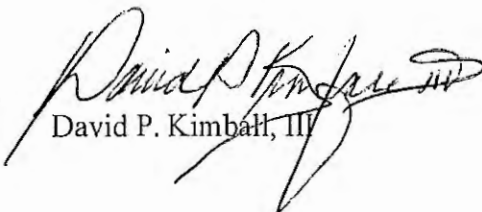
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Although RID is conducting its remedial action pursuant to applicable WQARF requirements, federal law authorizes cost recovery actions under Section 107 of CERCLA against certain identified PRPs in federal court. Cost recovery actions under CERCLA's liability provisions do not preclude or preempt applicable state remediation requirements.<sup>7</sup>

Thank you for your consideration of RID's response to the PRP comments.

Very truly yours,  
**GALLAGHER & KENNEDY, P.A.**

By:

  
David P. Kimball, III

cc: Henry Darwin, ADEQ  
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<sup>7</sup> 42 U.S.C. § 9614