



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Ref: 8ENF-RC

Ms. Robin Bullock
Northwest Regional Manager
Atlantic Richfield Company
317 Anaconda Road
Butte, MT. 59701

MTL 29 2008

Re: **Notification of Change of Address for submittal of payment for Past Response Costs and Future Response Costs** incurred at the Georgetown Railroad Superfund Site and associated with the Administrative Order on Consent (AOC), Docket No. CERCLA-08-2008-0006.

Dear Ms. Bullock:

This letter is in regards to the AOC for a Time Critical Removal at the Georgetown Railroad Bed Site located in Deer Lodge County, MT. This AOC (Docket No. CERCLA-08-2008-0006) is effective July 18, 2008. In Section XV, Payment of Response Costs, Paragraph #49 and Paragraph #50 Payment of Future Response Costs, the address of the bank to receive payment via *certified or cashier's check* has changed. EPA no longer has an account with Mellon Bank, the Bank originally stated in the AOC. Instead, please send payment via certified check or Cashier's check to the following address:

CHECK PAYMENT

If Sent via Regular Mail:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

If Sent via FED EX and other non-Postal-Service express mail:

U.S. Bank
Government Lockbox 979076
US EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-L

St. Louis, MO 63101
314-418-1028.

Thank you for your cooperation in this matter.

Sincerely,



Virginia G. Phillips
Site Enforcement Specialist



7008-21 25 10 5 69

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE REGION 1

IN THE MATTER OF:
Georgetown Railroad Hed Site
Deer Lodge County, Montana

Atlantic Richfield Company

Respondent

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR TIME CRITICAL
REMOVAL ACTION

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-008-0006

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the United States Department of Agriculture, Forest Service ("Forest Service") (together referred to as the "Federal Agencies"), and Atlantic Richfield Company (ARC) or Respondent). This Settlement Agreement provides for the performance of a time critical removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located in Deer Lodge County, Sections 4, 8, 9, 16, 17, 18 and 20 of Township 5 North, Range 13 West, Montana, including the Georgetown Repository (the "Georgetown Railroad Site" or the "Site"). A relatively small portion of the Site is located on National Forest System lands ("NFS lands"), within the Beaverhead/Deer Lodge National Forest.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA") and pursuant to the authority vested in EPA pursuant to Executive Order 12580 (52 Fed. Reg. 2923 (January 23, 1987)) and further delegated to EPA Region 8 by Delegation 14-14-C, and with respect to only the NFS lands at the Site, under the authority vested in the Secretary of Agriculture pursuant to Executive Order 12580, delegated to the Chief of the Forest Service pursuant to 7 C.F.R. § 2.60(39), and re-delegated to the Regional Forester pursuant to Forest Service Manual 2164.04c, 2.1 (November 10, 1994).

3. EPA has notified the State of Montana (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA, Forest Service and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement does not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms in any proceeding to implement or enforce this Settlement Agreement.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon the Federal Agencies and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on August 8, 2007, by the Regional Administrator, EPA Region 8, or his/her delegate, and all attachments thereto, and with respect to the NFS lands, the Forest Service Action Memorandum relating to the Site, signed on August 27, 2007, by the Regional Forester, Region I, or his delegate, and all attachments thereto. The Action Memorandums are attached as Appendix A.

b. "Atlantic Richfield Company", "Atlantic Richfield" and "Respondent" shall mean the Atlantic Richfield Company, a Delaware corporation, and its subsidiaries.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

d. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Federal Agencies" shall mean collectively the United States Environmental Protection Agency and the Forest Service (to the extent a provision of the Settlement Agreement in which "Federal Agencies" appears pertains to the portion of the Site located on NFS lands).

The term “Federal Agencies” as used in this Settlement Agreement shall not be construed as permitting the Forest Service to exercise its authority under CERCLA Sections 104, 107 or 122 or under any of the terms and conditions of this Settlement Agreement on those portions of the Site or affecting actions that are conducted on those portions of the Site that are not located on NFS lands.

h. “Forest Service” shall mean the United States Department of Agriculture, Forest Service and any successor departments or agencies of the United States.

i. “MDEQ” shall mean the Montana Department of Environmental Quality and any successor departments or agencies of the State.

j. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs (or the State of Montana incurs pursuant to its cooperative agreement with EPA) in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 35 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 46 (emergency response) and Paragraph 71 (work takeover).

k. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

m. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

n. “Parties” shall mean EPA, Forest Service and Respondent.

o. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid or incurred (or the State of Montana paid or incurred pursuant to its cooperative agreement with EPA) in connection with the Site through February 28, 2006, plus Interest on all such costs.

p. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

q. "Removal Action" shall mean those activities to be undertaken by Respondent to implement the Action Memorandums and the Work Plans attached thereto, and incorporated by reference into, this Settlement Agreement.

r. "Respondent" shall mean Atlantic Richfield Company, a Delaware corporation and its subsidiaries and successors and assigns.

s. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

t. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

u. "Site" shall mean the Georgetown Railroad Superfund Site, encompassing approximately 5.5 linear miles, located in Deer Lodge County, Sections 4, 8, 9, 16, 17, 18 and 20 of Township 5 North, Range 13 West, Montana and including the Georgetown Repository located on the Sunny Side lode claim (M.S. 7550), lying in Section 4, Township 5 North, Range 13 West, which are depicted generally on the map attached as Appendix B.

v. "State" shall mean the State of Montana or the Montana Department of Environmental Quality and any successor departments or agencies of the State.

w. "United States" shall mean the United States of America, its agencies, departments and instrumentalities.

x. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(2) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under State law.

y. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

z. "Workplans" shall mean the Railroad Bed Time Critical Removal Action Design Report, the Residential Areas Time Critical Removal Action Design Report, the Repository Site Characterization and Design Report and the Removal Verification Sampling and Analysis Plan, Appendices D, E, F and G, respectively.

IV. FINDINGS OF FACT

8. The Georgetown Railroad is an abandoned Butte, Anaconda and Pacific Railway Company ("BA&P") railroad spur approximately 30 to 75 feet wide, located east of Georgetown Lake in Township 5 North, Range 13, West, Sections 4, 5, 9, 16, 17, 18 and 20 in Deer Lodge

County, Montana. There are multiple residential sites situated along the abandoned Georgetown Railroad east of Georgetown Lake, and these residential sites are used both seasonally and as permanent residences.

9. The section of BA&P railroad line from Browns (what is known today as the "lime quarry") was laid out in the winter of 1911-1912. The line was constructed by BA&P in the spring and summer of 1912, using smelter slag and waste rock as the upper ballast material. Railroad operations commenced upon completion of the line.

10. The Georgetown Extension was constructed to serve the Anaconda Copper Mining Company's ("Anaconda") Southern Cross Mine and it also provided passenger service between the town of Anaconda and the Georgetown District. Anaconda arranged to use the Georgetown Railroad to haul ore from the mine to a smelter in Anaconda. Anaconda closed the mine in 1925. The BA&P ceased operations on the Georgetown Extension at the same time and most of the railing along the Georgetown Railroad was removed in 1924. BA&P was a subsidiary of Anaconda.

11. Anaconda was subsequently acquired by the Respondent in 1977 and Anaconda merged with the Respondent in 1981. Respondent is a corporation doing business in the State of Montana and is currently organized under the laws of the State of Delaware.

12. According to the Deer Lodge County Assessor's Office, the ownership of the former Georgetown railroad grade and right-of-way is currently owned primarily by private entities and individual landowners (i.e., the ownership reverted with abandonment of the line). A relatively small portion of the Georgetown Railroad is located on NFS lands within the Beaverhead-Deerlodge National Forest.

13. In May 1991 the State of Montana, Department of Health and Environmental Sciences ("MDHES"), conducted a site investigation of the Georgetown Railroad and collected soil samples of the railbed. As a result, MDHES completed a Preliminary Assessment ("PA") of the Site in June 1991 and determined that mine tailings consisting of fine sands and silt/r appeared to have been placed as ballast along the railroad bed and that soil samples of the railbed contained elevated levels of arsenic, cadmium, chromium, mercury, copper and zinc. Samples taken on the hillside below the Georgetown Railroad bed were non-detect or below residential action levels.

14. Based on the PA, MDHES, in conjunction with EPA, conducted a Site Investigation ("SI") of the Georgetown Railroad, which was completed in May 1993. Soil samples taken on and down-gradient of the railroad grade and on two nearby residential properties contained levels of metals, including arsenic at three times higher than background concentrations.

15. In 1992 the Montana Department of Transportation performed its own environmental assessment, including soil sampling, along the Georgetown Railroad bed and the Highway 1 right-of-way near Georgetown Lake. Elevated concentrations of metals were detected along portions of the Site in the vicinity of Highway 1, which runs adjacent to portions of the Site.

16. In 2000 EPA conducted an Expanded Site Inspection (“ESI”) to characterize the Site for possible Hazard Ranking System (“HRS”) scoring. Soil samples taken from the Georgetown Railroad bed contained elevated levels of metals. In addition, several residential yards exhibited arsenic levels that exceeded residential action levels.

17. In 2003 Respondent conducted an investigation of residential yards located near the Georgetown Railroad. Five of ten residential yards showed levels of arsenic that exceeded the arsenic action level of 250 ppm in surface samples.

18. Based on the railroad bed characterization data generated from the numerous sampling results collected during the various site investigations conducted since 1991, EPA determined that a time critical removal action is necessary to address threats to public health or welfare or the environment posed by the actual or threatened release of arsenic from mining related wastes associated with the Georgetown Railroad bed. Land use in the vicinity of the Georgetown Railroad is residential and open space. EPA prepared an Action Memorandum dated August 8, 2007 that requires a time critical removal action to address the concentrations of arsenic that exceed human health action levels in the Georgetown Railroad bed ballast material and on residential yards located in proximity of the rail bed. The action level for arsenic (250 ppm residential) is to be applied to this removal action. The Forest Service prepared an Action Memorandum dated August 27, 2007, that requires the time critical removal action on the NFS lands.

19. The Parties agree that the Work to be performed pursuant to this Settlement Agreement is anticipated to result in all property within the Site, except for the Georgetown Repository, having levels of arsenic below the appropriate action levels, thus eliminating the need for institutional controls in any area of the Site other than the Georgetown Repository.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

20. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, the Federal Agencies have determined that:

a. The Georgetown Railroad Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for performance of response action and for response costs incurred and to be incurred at the Site. Respondent was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement is necessary to protect the public health or welfare or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

21. To perform the time critical removal action effectively and expeditiously, to avoid unnecessary duplication of effort and to avoid unnecessary delay of completion of such removal action, the Federal Agencies have designated EPA's On-Scene Coordinator ("EPA OSC") as the OSC for the Federal Agencies under this Settlement Agreement. The EPA OSC will coordinate and transmit all Federal Agency comment on all deliverables, reports, or other communication, both oral and written with Respondent. The EPA OSC shall serve as the point of contact for Respondent's Project Coordinator and other authorized representatives as work proceeds under this Settlement Agreement. Approvals required pursuant to this Settlement Agreement shall be communicated to Respondent in writing by EPA OSC on behalf of the Federal Agencies.

22. Respondent has retained and the Federal Agencies have approved Pioneer Technical Services and Envirocon as the contractors to perform the Work. The Federal Agencies retain the right to disapprove of these previously selected contractors for cause. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to commencement of such Work. The Federal Agencies retain the right to disapprove of any or all of the latter contractors and/or subcontractors retained by Respondent. If the Federal Agencies disapprove of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of EPA's disapproval.

23. Respondent has designated and the Federal Agencies have approved Trey Harbert, III as the Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. The Federal Agencies retain the right to disapprove of the designated Project Coordinator. If the Federal Agencies disapprove of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the Federal Agencies of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from the Federal Agencies relating to this Settlement Agreement shall constitute receipt by Respondent.

24. EPA has designated Joyce Ackerman of the Preparedness, Assessment and Emergency Response Branch, Region 8, as its On-Scene Coordinator ("EPA OSC") and Sara Sparks of the Montana Operations Office, Region 8 as its Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the EPA OSC at EPA-SA, 1595 Wynkoop Street, Denver, CO 80202. The Forest Service has designated Bob Wintergerst of the Engineering Staff, Region 1, as the NFS OSC/Project Coordinator with respect to the NFS portion of the Site. As provided in Paragraph 21, above, EPA's OSC shall coordinate with and direct all submissions concerning NFS lands and required by this Settlement Agreement to the Project Coordinator at USDA Forest Service, Region 1, 200 East Broadway, Missoula, MT 59817. The NFS OSC/Project Coordinator shall direct all deliverables, reports or other communication required under this Settlement Agreement to the EPA OSC designated pursuant to Paragraph 21 of this Settlement Agreement.

25. The Federal Agencies and Respondent shall have the right, subject to Paragraph 23, to change their respective designated OSC or Project Coordinator. Respondent shall notify the Federal Agencies 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

26. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandums and the Workplans. The actions to be implemented generally include, but are not limited to, the following:

The removal and appropriate disposal of materials containing elevated levels of arsenic which are located on and adjacent to the Georgetown Railroad bed located in Deer Lodge County, Sections 4, 8, 9, 16, 17, 18 and 20 of Township 5 North, Range 13 West, Montana and the operation and maintenance of a repository constructed to hold such Waste Materials. Respondent is obligated to operate and maintain the Georgetown Railroad Site Repository, and to meet its obligation, Respondent has arranged for the landowner to perform this Repository operation and maintenance work. Nonetheless, the ultimate responsibility for the operation of the repository remains with Respondent and

as between the United States and Respondent, Respondent assumes responsibility for any Waste Material from the Site which is placed in the Georgetown Repository, including all future costs, consistent with the requirements of this Settlement Agreement and the Workplans. This Settlement Agreement only covers the railroad bed, residential yards and the repository described herein and does not apply to the cleanup of waste rock, mill tailings, or any other Waste Materials on the Southern Cross Mine site.

27. The Federal Agencies have approved the Workplans, which are attached and incorporated by reference as Exhibits D, E, F and G.

28. Health and Safety Plan. No later than ten days prior to the commencement of on-Site Work under this Settlement Agreement, Respondent shall submit for the Federal Agencies review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If the Federal Agencies determine that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by the Federal Agencies and shall implement the plan during the pendency of the removal action.

29. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall be in accordance with the Work Plan and shall conform to the Federal Agencies' direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. All sampling and analysis shall be in accordance with the Clark Fork River Superfund Site Investigations Quality Assurance Project Plan ("CRSSI QAPP"). Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate Federal Agencies' guidance and the CRSSI QAPP.

b. Upon request by the Federal Agencies, Respondent shall have such a laboratory analyze samples submitted by the Federal Agencies for QA monitoring. Respondent shall provide to the Federal Agencies the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by the Federal Agencies, Respondent shall allow the Federal Agencies or their authorized representatives to take split, duplicate and/or confirmation samples. Respondent shall notify the Federal Agencies not less than 3 days in advance of any sample collection activity, unless shorter notice is agreed to by the Federal Agencies. The Federal Agencies shall have the right to take any additional samples that they deem necessary. Upon request, the Federal Agencies shall allow Respondent to take split or duplicate samples of any samples the Federal Agencies take as part of EPA's oversight of Respondent's implementation of the Work.

d. All soils XRF sampling data shall be transmitted to the Federal Agencies within 24 hours of the time in which Respondent receives that data from the laboratory and all groundwater data shall be transmitted to the Federal Agencies within seven (7) days of the time in which Respondent receives that data from the laboratory.

30. Post-Removal Site Control. In accordance with Work Plan schedules, or as otherwise directed by the Federal Agencies, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(f) of the NCP and OSWER Directive No. 9360.2-02. Upon the Federal Agencies' approval, Respondent shall implement such controls and shall provide the Federal Agencies with documentation of all post-removal site control arrangements.

31. Reporting.

a. Respondent shall submit a written progress report to the Federal Agencies concerning actions undertaken pursuant to this Settlement Agreement by the 10th day of each month during the conduct of the on-site field activities. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by the Federal Agencies, Respondent shall submit such documents in electronic form.

32. Final Report. Within 45 days after completion of all Work required by this Settlement Agreement, Respondent shall submit for the Federal Agencies' review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report.

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete."

33. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinators. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 33(a) and 33(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain the Federal Agencies' certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

c. Pursuant to the Work described in the Work Plans, it is not anticipated that there will be any off-site shipment of Waste Material from the Site under Paragraph 33.

IX. SITE ACCESS

34. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide the Federal Agencies, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement. Pursuant to the Forest Service Action Memorandum and this Settlement Agreement, the Forest Service shall allow access to NFS lands on the Site to implement the Settlement Agreement.

35. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its reasonable best efforts to obtain all necessary access agreements within 15 days prior to on-site

construction activities, or as otherwise specified in writing by the EPA OSC. Respondent shall immediately notify the Federal Agencies if after using its reasonable best efforts it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. The Federal Agencies may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

36. Respondent shall, within forty-five (45) days of completion of the Work, begin to use its best efforts to implement the institutional controls in Appendix C to this Settlement Agreement for the area that is owned or controlled by persons other than Respondent within the Site that will be used as a repository for Waste Materials removed from the railroad bed pursuant to the Work Plan. Best efforts include a good faith effort to resolve any dispute between Respondent and third party landowner, and shall include good faith discussions between Respondent and third party landowner, and/or other appropriate methods of dispute resolution, which shall include, amongst other methods of demonstrating best efforts, arbitration in accordance with the Federal Arbitration Act, Section 9 USC Sections 1-16. If other methods of demonstrating best efforts have failed, Respondent shall initiate such arbitration within one year of completion of the Work. In determining whether Respondent has used best efforts, EPA shall consider the degree of general cooperation shown by the third party landowner.

37. Notwithstanding any provision of this Settlement Agreement, the Federal Agencies retain all of their respective access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

38. Respondent shall provide to the Federal Agencies and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to Respondent's activities at the Site, Site conditions or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work, subject to Paragraphs 39 and 40 below. Upon reasonable notice and for appropriate governmental purposes, Respondent shall also make available to the Federal Agencies and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

39. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to the Federal Agencies and the State under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by the Federal Agencies will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they

are submitted to the Federal Agencies and the State, or if the Federal Agencies have notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

40. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege, the work product doctrine or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide the Federal Agencies with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

41. No claim of confidentiality shall be made with respect to any validated data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site. No claim of privilege shall be made with respect to any data.

XI. RECORD RETENTION

42. Until 5 years after Respondent's completion of the Work pursuant to this Settlement Agreement, Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 5 years after Respondent's completion of the Work pursuant to this Settlement Agreement, Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work. Records and documents relating to the repository created and maintained pursuant to this Settlement Agreement shall be retained for 5 years after completion of the Work, or longer if necessary to enforce institutional controls implemented for the repository. At the conclusion of this retention period, copies of these records and documents shall be provided to the Federal Agencies.

43. At the conclusion of this document retention period, Respondent shall notify the Federal Agencies and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the Federal Agencies or the State, Respondent shall deliver any such records or documents to the Federal Agencies or the State. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege, work product or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide the Federal Agencies or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3)

the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

44. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since it commenced negotiations with EPA on this Settlement Agreement.

XII. COMPLIANCE WITH OTHER LAWS

45. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(c) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by the Federal Agencies, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws that are identified in the Action Memorandum and clarified by the performance standards established in the Work Plans.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

46. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in Settlement Agreement to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA OSC or, in the event of his/her unavailability, the Regional Duty Officer at (303) 293-1788 and the Forest Service Regional Environmental Engineer at (406) 329-3036 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and the Federal Agencies take such action instead, Respondent shall reimburse the Federal Agencies all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

47. In addition, in the event of any new release of a hazardous substance from the Site that is not addressed by the Work under this Settlement Agreement, Respondent shall immediately notify the EPA OSC at (303) 293-1788 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any

release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

48. The EPA OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The EPA OSC shall have the authority vested in an on scene coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the EPA OSC from the Site shall not be cause for stoppage of work unless specifically directed by the EPA OSC. With respect to the NFS land at the Site, the NFS OSC/Project Coordinator shall have the authority vested in an on scene coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken. The NFS OSC/Project Coordinator shall direct any communication, both written and oral, under this Paragraph to the EPA OSC, who will be the single point of contact on behalf of the Federal Agencies, pursuant to paragraph 21 of this Settlement Agreement. The NFS OSC/Project Coordinator may not act to exercise its authority under this Paragraph independently.

XV. PAYMENT OF RESPONSE COSTS

49. Payment for Past Response Costs.

a. Within thirty (30) days after the Effective Date, Respondent shall pay to EPA \$166,240.61 for reimbursement and full satisfaction of Past Response Costs. Respondent shall each make the payment required by this Paragraph by a certified or cashier's check or by wire transfer made payable to "EPA Hazardous Substance Superfund" and shall include its name and address and the EPA Site/Spill ID number 08-KN. Respondent shall send the payment as indicated below:

For certified or cashier's check, payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

Regular Mail:

Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Express Mail:

Environmental Protection Agency 360859
Mellon Client Service Center Rm 154-0670

500 Ross Street
Pittsburgh, PA 15262-0001

For wire transfer, payment must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account= 68010727
TREAS NYC/CTR/
33 Liberty Street
New York NY 10045

For ACH (also known as REX or remittance express)
Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank
ABA= 05103676
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22- checking
808 17th Street NW
Washington DC 20074

Contact person: JessieWhite@PNCbank.com or (301) -887-6548

b. At the time of payment, Respondent shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

Dana Anderson, NWD
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

And

Kelcey Land, Cost Recovery Program Manager, ENF-RC, US
EPA, 1595 Wynkoop Street, Denver, CO 80202-1129.

c. The total amount to be paid by Respondent pursuant to Paragraph 49(a) shall be deposited in the Georgetown Railroad Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance

Superfund.

50. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. For as long as Future Response Costs are incurred and remain below a total of \$100,000, EPA will, on a periodic basis, send Respondent a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Once Future Response Costs exceed \$100,000, EPA will, on a periodic basis, send Respondent a bill requiring payment that includes a cost package for EPA's costs consisting of applicable: (1) payroll information, consisting of the SCORPIOS report or an equivalent cost summary, and any time sheets that exist, if requested by Respondent; (2) indirect cost information, consisting of an overall and an employee-by-employee SCORPIOS report or equivalent cost summary; (3) travel information, consisting of a SCORPIOS report or equivalent cost summary, travel authorizations, and travel vouchers or their equivalent if they exist; (4) EPA contractor (including Contract Laboratory Program contacts) information, consisting of site specific vouchers, if they exist, Annual Allocation Reports and the SCORPIOS report or equivalent cost summary; and (5) Inter-Agency Agreements. If Respondent determines that documentation for costs in (4) or (5) is insufficient to determine that costs are not inconsistent with the NCP, it may request further documentation. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 52 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check(s) or wire transfer made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Respondent and EPA Site/Spill ID number 08-KN. For certified or cashier's check, payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

Regular Mail:

Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Express Mail:

Environmental Protection Agency 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15262-0001

For wire transfer, payment must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account= 68010727
TREAS NYC/CTR/
33 Liberty Street
New York NY 10045

For ACH (also known as REX or remittance express)
Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank

ABA= 05103676
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22- checking
808 17th Street NW
Washington DC 20074

Contact person: JessieWhite@PNCbank.com or (301) -887-6548

c. At the time of payment, Respondent shall send notice that payment has been made by email to acctreceivable.cinwd@epa.gov, and to:

Dana Anderson, NWD
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

And

Kelcey Land, Cost Recovery Program Manager, ENT-RC, US EPA, 1595
Wynkoop Street, Denver, CO 80202-1129.

d. The total amount to be paid by Respondent pursuant to Paragraph 50(a) shall be deposited in the Georgetown Railroad Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

51. In the event that the payment for Past Response Costs is not made within 30 days of

the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill. Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

52. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 50 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 50(c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 30 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

53. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

54. If Respondent objects to any of the Federal Agencies' action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify the Federal Agencies in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. The Federal Agencies and Respondent shall have 14 days from the Federal Agencies' receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the Federal Agencies.

55. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the parties are unable to reach an agreement within the Negotiation Period, Respondent shall be afforded the opportunity to present its position, including any written materials to the Federal Agencies. The Federal Agencies will fairly and impartially

consider the evidence and the position of the Federal Agencies and Respondent and will issue a joint written decision on the dispute to Respondent. If Respondent does not object to such written decision, it shall be incorporated into and become an enforceable part of this Settlement Agreement. If Respondent objects to the written decision, it shall notify the Federal Agencies within 15 days of receipt of the decision and shall be afforded the opportunity to present its position, including any written materials, to the Federal Agencies (for the EPA, the Region 8 Regional Administrator or for the Regional Forester, the Forest Service Region 1 (where activity or issue concerns NFS lands)). The Federal Agencies (for the EPA, the Region 8 Regional Administrator or for the Forest Service, the Regional Forester, Region 1 (where activity or issue concerns NFS lands)), will fairly and impartially consider the evidence and the positions of Respondent and EPA or Forest Service and will issue a final written decision on the dispute to Respondent. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section, unless so determined by the Federal Agencies. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Federal Agencies' decision, whichever occurs.

XVII. FORCE MAJEURE

56. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or Respondent's failure to use best efforts to record or enforce the restrictive covenants agreement under Paragraph 36 of this Settlement Agreement; provided, however, that force majeure includes Respondent's inability to obtain implementation of the institutional controls required in Paragraph 36 of this Settlement Agreement if Respondent has exercised best efforts.

57. If any event occurs or has occurred that may materially delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify the Federal Agencies orally within 3 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent,

such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

58. If the Federal Agencies agree that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by the Federal Agencies for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If the Federal Agencies do not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, the Federal Agencies will notify Respondent in writing of its decision. If the Federal Agencies agree that the delay is attributable to a *force majeure* event, the Federal Agencies will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

59. Respondent shall be liable to the Federal Agencies for stipulated penalties in the amounts set forth in Paragraph 60 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement and any plans or other documents approved by the Federal Agencies pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

60. Stipulated Penalty Amounts.

The following stipulated penalties shall accrue per violation per day for any noncompliance with the terms of this Settlement Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$7,500	31st day and beyond, not including days in dispute resolution

61. In the event that the Federal Agencies assume performance of a portion or all of the

Work pursuant to Paragraph 71 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$10,000.

62. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after the Federal Agencies receipt of such submission until the date that the Federal Agencies notify Respondent of any deficiency; 2) with respect to a decision by the Federal Agencies, under Paragraph 55 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Federal Agencies issue a final decision regarding such dispute; 3) during any time period Respondent is exercising best efforts to obtain the institutional controls required under Paragraph 36 of this Settlement Agreement, or 4) in the event that Respondent is unable to obtain the implementation of such institutional controls despite its best efforts. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

63. Following the Federal Agencies' determination that Respondent has failed to comply with a requirement of this Settlement Agreement, the Federal Agencies shall give Respondent written notification of the failure and describe the noncompliance. The Federal Agencies may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Federal Agencies have notified Respondent of a violation.

64. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, Attn: Superfund Accounting, Lockbox 360859, Pittsburgh, PA, 15251-6859 and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 08-KN, the EPA Docket Number CEBIA-08-201-001, and Respondent's name and address. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the Federal Agencies as provided in Paragraph 49(b).

65. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

66. Subject to the second sentence below, penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by

agreement or by receipt of the Federal Agencies decision. Penalties will not accrue for more than 14 days during which the Federal Agencies are making a joint dispute resolution decision.

67. If Respondent fails to pay stipulated penalties when due, the Federal Agencies may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 64. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Federal Agencies to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(f) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(f), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(f) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that the Federal Agencies assume performance of a portion or all of the Work pursuant to Section XX, Paragraph 71. Notwithstanding any other provision of this Section, the Federal Agencies may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY THE FEDERAL AGENCIES

68. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the Federal Agencies covenant not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and its successors, assigns, officers, directors and employees to the extent their liability derives from Respondent's potential liability. This covenant does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY THE FEDERAL AGENCIES

69. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of the Federal Agencies or the United States to take, direct, or

order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent the Federal Agencies from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

70. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. The Federal Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability; and
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

71. Work Takeover. In the event the Federal Agencies determine that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, the Federal Agencies may assume the performance of all or any portion of the Work as the Federal Agencies determine necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute the Federal Agencies' determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, the Federal Agencies retain all authority and reserve all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

72. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Montana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 74 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues a Settlement Agreement pursuant to the reservations set forth in Paragraphs 70 (b) - (e), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

73. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

74. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

- a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if the Federal Agencies have determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

75. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on the Federal Agencies' selection of response actions, or the oversight or approval of the Respondent's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

XXII. OTHER CLAIMS

76. By issuance of this Settlement Agreement, the United States and the Federal Agencies assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States and the Federal Agencies shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement. Respondent assumes no liability for injuries or damages to persons or property resulting from the negligence, gross negligence or willful misconduct of the United States. The Respondent shall not be deemed a party to any contract entered into by the United States and the Federal Agencies in implementing actions pursuant to this Settlement Agreement.

77. Except as expressly provided in Section XXI, Paragraph 74 and Section XIX (Covenant Not to Sue by the Federal Agencies), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

78. No action or decision by the Federal Agencies pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

79. The United States and Respondent agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs. Except as provided in Section XXI, Paragraph 74, of this Settlement Agreement (De Micromis Waiver), nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The United States and Respondent agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

XXIV. INDEMNIFICATION

81. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of

Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States. Respondent shall not be held out as a party to any contract entered into by or on behalf of the United States and the Federal Agencies in implementing activities pursuant to this Settlement Agreement.

82. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

83. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on the Federal Agencies' selection of response actions, or the oversight or approval of the Respondent's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays provided, however, that such claims do not arise out of the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, this exception to indemnification shall not include any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall it include a claim based on the Federal Agencies' selection of response actions, or the oversight or approval of the Respondent's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than

CERCLA.

XXV. INSURANCE

84. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, Respondent shall provide the Federal Agencies with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to the Federal Agencies that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

85. Respondent shall demonstrate its ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to the Federal Agencies, within 15 days of the Effective Date of this Settlement Agreement, internal financial information to allow the Federal Agencies to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimate of the cost for the removal action at the Site. If Respondent seeks to demonstrate financial assurance by means of internal financial information, or by guarantee of a third party, it shall re-submit such information annually, on the Effective Date of this Settlement Agreement, until a Notice of Completion has been issued by the Federal Agencies.

86. Any and all financial assurance instruments provided pursuant to this Section XXVI shall be in form and substance satisfactory to the Federal Agencies, determined in the Federal Agencies' sole discretion. The financial assurance instrument(s) provided pursuant to this Section XXVI (including, without limitation, any negotiable instruments issued for EPA's benefit) shall be submitted by Respondent to Daniela Golden, U.S. EPA, ENF-RC, 999 18th Street, Suite 300, Denver, CO 80202 and to the Forest Service OSC/Project Coordinator. Respondent shall also provide copies of all such financial assurance instruments to the other representatives of the Federal Agencies as specified in Section VII.

87. In the event that the Federal Agencies determine at any time that the financial assurances provided pursuant to this Section are inadequate, or in the event that Respondent becomes aware of information indicating that any financial assurances provided pursuant to this Section no longer satisfy the requirements set forth herein (including, without limitation, that any third-party provider of such assurances such as a surety, trustee and/or financial institution no longer qualifies to provide such assurances), then Respondent shall, within thirty (30) days of receipt of notice of the Federal Agencies' determination or, as the case may be, within thirty (30) days of becoming aware of such information, obtain and present to the Federal Agencies for approval one of the other forms of financial assurance listed in Paragraph 85 of this Settlement Agreement. In addition, if at any time the Federal Agencies notify Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of receipt of such notification, Respondent shall obtain and present to the Federal Agencies for approval a revised form of financial assurance (and otherwise acceptable under this Section XXVI) that reflects such cost increase. Respondent's inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, Respondent's obligation to complete the Work in strict accordance with the terms hereof.

88. (a) Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 85 above after entry of this Settlement Agreement, Respondent may, on any anniversary date of the Effective Date of this Settlement Agreement, or at any other time agreed to by the parties, petition the Federal Agencies in writing to request a reduction in the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. Respondent shall submit a written proposal for such reduction to the Federal Agencies which shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The decision to accept such a proposal and to allow a reduction of the amount of financial assurance in accordance herewith shall rest in the Federal Agencies' sole discretion. If EPA decides to accept such a proposal, EPA shall notify the Respondent of such decision in writing. After receiving the Federal Agencies' written acceptance, Respondent may reduce the amount of the financial assurance in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with a final administrative decision resolving such dispute.

(b) Change of Form of Financial Assurance. If Respondent desires to change the form of financial assurance provided pursuant to this Section XXVI after the Effective Date of this Settlement Agreement, it may, on any anniversary date of the Effective Date of this Settlement Agreement, or at any other time agreed to by the parties, petition the Federal Agencies in writing to request a change in the form of financial assurance provided hereunder. Respondent shall

submit a written proposal for such change to the Federal Agencies which shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and a detailed description of the proposed revised form of financial assurance. The decision to accept such a proposal and to allow a change in the form of financial assurance shall rest in the Federal Agencies' sole discretion. If the Federal Agencies decide to accept such a proposal, the Federal Agencies shall notify Respondent of such decision in writing. After receiving the Federal Agencies' written acceptance, Respondent may change the form of financial assurance in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondent may change the form of financial assurance required hereunder only in accordance with a final administrative decision resolving such dispute.

(c) Release of Financial Assurance. If Respondent receives written notice from the Federal Agencies in accordance with Paragraph 92 hereof that the Work has been fully and finally completed in accordance with the terms of this Settlement Agreement, or if the Federal Agencies otherwise so notify Respondent in writing, Respondent may petition the Federal Agencies to allow the release or discontinuance of the financial assurance required hereunder. Respondent shall submit a written proposal for such release to the Federal Agencies which shall specify the basis for the requested release (e.g., full and final completion of the Work, etc.). The decision to accept such a proposal for release of the financial assurance shall rest in the Federal Agencies' sole discretion. When EPA or Forest Service (where activity or issue concerns NFS lands) decides to accept such a proposal, the Federal Agencies shall notify Respondent of such decision in writing. After receiving the Federal Agencies' written acceptance, Respondent may release the financial assurance in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondent may release the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XXVII. MODIFICATIONS

89. The EPA OSC, in coordination with the Forest Service OSC/Project Coordinator, may make modifications to any plan or schedule in writing or by oral direction that is not inconsistent with the NCP or the scope of the Action Memorandums and Work Plans. No change in any plan that increases the amount of Work or decreases the amount of time scheduled for the Work shall give rise to stipulated penalties, unless such modification has been agreed to in writing by Respondent. Any oral modification will be memorialized in writing by EPA within 14 days, but shall have as its effective date the date of the EPA OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

90. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to the Federal Agencies for

approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the EPA OSC pursuant to Paragraph 89.

91. No informal advice, guidance, suggestion, or comment by the EPA OSC or other Federal Agencies' representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

92. When the Federal Agencies determine, after the Federal Agencies' review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including post-removal site controls, operation and maintenance of the waste repository, payment of Future Response Costs, or record retention, the Federal Agencies will provide written notice of completion to Respondent. If the Federal Agencies determine that any such Work has not been completed in accordance with this Settlement Agreement, the Federal Agencies will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in Settlement Agreement to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the Federal Agencies' notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

93. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

94. This Settlement Agreement [and its appendices] constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A Action Memorandums

Appendix B	Site Map
Appendix C	Repository Institutional Controls
Appendix D	Railroad Bed Time Critical Removal Action Design Report
Appendix E	Residential Areas Time Critical Removal Action Design Report
Appendix F	Repository Site Characterization and Design Report
Appendix G	Removal Verification Sampling and Analysis Plan

XXX. EFFECTIVE DATE

95. This Settlement Agreement shall be effective when the Settlement Agreement is signed by EPA and Forest Service.

96. This Settlement Agreement may be executed in any number of counterparts, each of which when executed and delivered to the EPA and Forest Service shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

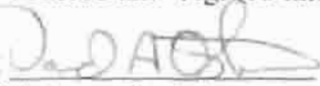
The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

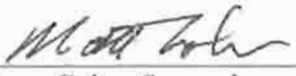
Agreed this 16 day of July, 2008.

For Respondent Atlantic Richfield Company

By 
Robin Bullock
Northwest Regional Manager
Atlantic Richfield Company

It is Ordered and Agreed this _____ day of July, 2008.

BY:  DATE: 7/16/08
David Ostrander, Director
Preparedness, Assessment and
Emergency Response Branch
Region 8
U.S. Environmental Protection Agency

BY:  DATE: 7/16/08
Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY:  DATE: 16 July 2008
Sharon Kercher, Director
Technical Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Tom Tidwell
Regional Forester
Region 1
USDA Forest Service

EFFECTIVE DATE: 7/18/08

It is Ordered and Agreed this _____ day of July, 2008.

BY: _____ DATE: _____
David Ostrander, Director
Preparedness, Assessment and
Emergency Response Branch
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Sharon Kercher, Director
Technical Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: *Thomas L. Tidwell* DATE: 7/18/2008
ta Thomas L. Tidwell
Regional Forester
Region 1
USDA Forest Service

EFFECTIVE DATE: 7/18/08