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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

BUTTE PRIORITY SOILS OPERABLE UNIT OF
THE SILVER BOW CREEK/BUTTE AREA
(BUTTE PORTION) SITE

ATLANTIC RICHFIELD COMPANY,)
BUTTE SILVER BOW COUNTY,)
INLAND PROPERTIES)
INCORPORATED,)
BNSF RAILWAY COMPANY,)
UNION PACIFIC RAILROAD)
COMPANY, and)
RARUS RAILWAY COMPANY,)

EPA Docket No. CERCLA-08-2011-0011

RESPONDENTS.

PROCEEDING UNDER SECTION 106(a)
OF THE COMPREHENSIVE
ENVIRONMENTAL RESPONSE,
COMPENSATION, AND LIABILITY ACT, AS
AMENDED, 42 U.S.C. § 9606(a).

**ADMINISTRATIVE ORDER
FOR PARTIAL REMEDIAL DESIGN/REMEDIAL ACTION IMPLEMENTATION AND
CERTAIN OPERATION AND MAINTENANCE
AT THE BUTTE PRIORITY SOILS OPERABLE UNIT/BUTTE SITE**

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ATTACHMENTS

- Exhibit 1 Record of Decision for Butte Priority Soils Operable Unit (EPA 2006)
- Exhibit 2 Explanation of Significant Differences for the Butte Priority Soils Operable Unit (EPA 2011)
- Exhibit 3 Partial Remedy Implementation Work Plan and Attachments, June 2011
- Exhibit 4 Map showing Lower Butte Site

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondents to perform partial remedial design and remedial action activities, as well as certain Operation and Maintenance Activities, for the Butte Priority Soils Operable Unit of the Silver Bow Creek/Butte Area (Butte Portion) Superfund Site and adjacent properties. This Order is issued to Respondents by the United States Environmental Protection Agency (EPA) under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,923, and was further delegated to EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-B. This authority has been further delegated to the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation and further delegated to the Director, Montana Office.

II. FINDINGS OF FACT

2. Respondents the Atlantic Richfield Company (AR), Inland Properties Incorporated (Inland), Burlington Northern Santa Fe Railway Company (BNSF), Union Pacific Railroad Company (UP), and Rarus Railway Company (Rarus), are duly authorized corporations doing business in the State of Montana. Respondent AR is an affiliate of BP Corporation North America, Inc. and a wholly owned subsidiary of BP America Inc., both of which are affiliates of BP, LLC. Respondent Butte Silver Bow County (BSBC) is a designated government entity under the laws of the State of Montana governing the city of Butte and the county of Butte Silver Bow in Montana.

- a. Respondent AR is now, and has been since on or about 1977, the past and, in some cases, current owner and/or operator of a major portion of the "facilities" within and adjacent to the Butte Site, as those terms are defined below. AR is also the current and past owner/operator of the Anaconda Smelter facility in Anaconda, Montana, which distributed hazardous substances such as arsenic and lead via aerial emissions to a large area including the Butte Site.
- b. As a result of a merger with the Anaconda Company (also known as the Anaconda Copper Mining Company) in 1977, Respondent AR is also the successor-in-interest to, and assumed the liabilities incurred by the Anaconda Company and/or its subsidiaries and related corporations or businesses, which were owners and operators of "facilities" within and adjacent to the Butte Site and the Anaconda Smelter facility. As a result of one or more mergers, restructurings, transfers of assets, continuations of business activities, or other corporate action, Respondent AR is also the successor-in-interest to, and has assumed the liabilities incurred by

predecessors to the Anaconda Company, the Anaconda Copper Mining Company and/or either companies' subsidiaries and related corporations or businesses which were also owners and operators of "facilities" within and adjacent to the Butte Site and the Anaconda Smelter facility.

- c. Respondent BSBC is the past and current owner and operator of several "facilities", within the Butte Site, as those terms are defined below.
- d. Respondent Inland was the former owner and/or operator of "facilities" within the Butte Site at the time of disposal, as those terms are defined below.
- e. Respondents BNSF, UP, and Rarus are past and current owners and operators of certain "facilities" (railbeds and related properties) within the Butte Site, as those terms are defined below.
- f. The Respondents also contributed to Butte Site contamination through the arrangement for disposal, transportation for disposal, and/or generation of hazardous substances through the transportation of hazardous substances and related spillage, the management of stormwater, and other activities at the Butte Site.

3. The Butte Priority Soils Operable Unit (BPSOU) is an area within and adjacent to the cities of Butte, Montana and Walkerville, Montana which consists of former mining areas, and contains several waste piles, former mining smelter and milling facilities, contaminated railroad beds, and other similar areas and source areas. These areas are each facilities within the meaning of sections 101(9) and 107 of CERCLA, 42 U.S.C. §§ 9601(9) and 9607. It also includes the alluvial aquifer beneath the cities of Butte and Walkerville, as well as a portion of Silver Bow Creek and a portion of Blacktail Creek which run through the Butte Priority Soils Operable Unit. A map of the Butte Priority Soils Operable Unit surface area is found as part of the map contained as Exhibit B to the Partial Remedy Implementation Work Plan which is Exhibit 3 to this Order. The Butte Priority Soils is an operable unit, designated by EPA, within the Silver Bow Creek/Butte Area Superfund Site, which was listed on the National Priority List pursuant to CERCLA as described below.

4. Butte, Montana and the surrounding area was the site of mining, milling and smelting activities from the 1860s to the present. In response to the release and threatened release of hazardous substances from facilities in and around Butte and Anaconda, Montana, into Silver Bow Creek, pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Silver Bow Creek Site on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658. The original listing of the Silver Bow Creek Superfund Site focused on contamination within and along Silver

Bow Creek from its headwaters in Butte through the Warm Springs Ponds, approximately 28 miles downstream from the headwaters. The original Silver Bow Creek Superfund Site was amended on July 22, 1987, 52 Fed. Reg. 27627, to include large areas in and around Butte, and is now known as the Silver Bow Creek / Butte Area Superfund Site. This addition is known as the Butte Portion of the Silver Bow Creek / Butte Area Site ("SBCB"), and includes the area later designated as the BPSOU (OU#8).

5. The extensive mining, milling, and smelting activities that occurred within the BPSOU included over 300 mines (which produced contaminated overburden and other wastes), at least 19 mills and smelters (which produced tailings, fines, and other contaminated wastes), and an extensive network of railroad beds and lines (some of which were created with contaminated materials in some areas and which received spills of contaminated concentrate and waste in some areas). At least 197 contaminated source areas, or "facilities", were created from these operations within the BPSOU. Aerial emissions from the mills and smelters, contributed to the spread of contamination throughout the BPSOU, including residences, yards, and business locations within and adjacent to the BPSOU. Contaminated source areas and railroad properties also leached contamination into the alluvial groundwater underneath BPSOU. Stormwater runoff from the source areas and railroad properties also contributed to the spread of hazardous substances throughout the BPSOU, including the alluvial groundwater aquifer and nearby Silver Bow Creek and Blacktail Creek. The storm water conveyance system within the BPSOU also became contaminated and is a source of continuing contaminated storm water discharges to Silver Bow Creek.

6. After conducting other data collection and liability searches, and in response to the release or substantial threat of release of hazardous substances in and from the BPSOU, EPA, in consultation with the Montana Department of Environmental Quality (DEQ), initiated a series of removal actions at the BPSOU beginning in 1988. The list of those removal actions is as follows, with EPA administrative order numbers indicated where potentially responsible parties performed all or part of the work:

- A. Walkerville Time Critical Removal Action (TCRA) I (1988) (Order No. CERCLA-VIII-88-05);
- B. Timber Butte TCRA (1989) (Order No. CERCLA-VIII-89-21);
- C. BPSOU TCRA's (1990 and 1991) (Orders No. CERCLA-VIII-90-11 and CERCLA-VIII-90-12);
- D. BPSOU Engineering Evaluation/Cost Analysis (EE/CA) Administrative Order on Consent (Order No. CERCLA-VIII-91-13);
- E. Colorado Smelter TCRA (1992) (Order No. CERCLA-VIII-92-04);
- F. Anselmo Mine Yard and Late Acquisition / Silver Hill TCRA (1992) (Order No. CERCLA-VIII-92-23);
- G. Walkerville TCRA II (1994) (EPA performed);
- H. Railroad Beds TCRA (2000 to the present) (Order No. CERCLA-VIII-2000-02);

- I. Stormwater TCRA (1995 to the present) (Order No. CERCLA-VIII-95-58);
- J. Walkerville TCRA III (2000) (EPA performed);
- K. Lower Area One EE/CA Administrative Order on Consent (Order No. CERCLA-VIII-90-14);
- L. Lower Area One Non-Time Critical Removal Action (NTCRA) (1992 to the present) (Order No. CERCLA-VIII-92-17);
- M. Manganese TCRA (1992) (EPA performed); and
- N. BPSOU Residential Soils / Waste Dumps NTCRA (1994 to the present) (Order No. CERCLA-VIII-94-21).

In addition, EPA and AR participated in the following associated actions: Clark Tailings RCRA action (1998) and Mine Flooding Operable Unit-related pump vault interceptor (2002).

7. In 1992, certain potentially responsible parties conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the BPSOU in accordance with 40 C.F.R. § 300.430 and Administrative Order on Consent Docket No. CERCLA-VIII-92-18. The RI/FS was completed in 2004. The BPSOU RI/FS, as well as a subsequent supplemental Focused Feasibility Report for the metro storm drain area of the BPSOU, examined alternatives for final remedial actions at the BPSOU.

8. In December of 2004, EPA, in consultation with DEQ, analyzed the various remedial action alternatives and proposed what it deemed to be the most appropriate remedy for the BPSOU and adjacent homes containing attic dust in a Proposed Plan (the BPSOU and the adjacent area are now known as the "Butte Site"). Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the Butte Site Proposed Plan in a major local newspaper of general circulation. It then provided an opportunity for written and oral comments from the public on the Butte Site Proposed Plan. A copy of the transcript of public meetings on the Butte Site Proposed Plan is available to the public as part of the administrative record upon which the EPA Region 8 Regional Administrator's delegate based the selection of the response actions for the Butte Site.

9. In September of 2006, EPA, in consultation with DEQ, made its final decision regarding a remedy for the Butte Site in accordance with CERCLA, and in a manner not inconsistent with CERCLA's governing regulations in the National Contingency Plan (the NCP), 40 C.F.R. Part 300. EPA issued a Record of Decision (ROD), Exhibit 1, regarding its selection in September of 2006 and published notice of the 2006 Record of Decision in a major local newspaper of general circulation on September 25, 2006. After the receipt of new information and other considerations, EPA issued an Explanation of Significant Differences (ESD) in June 2011 (Exhibit 2), which, among other things, amended the 2006 Record of Decision.

10. EPA's remedial action decision for the Butte Site is embodied in a ROD, executed on September 21, 2006 with partial concurrence by DEQ, Exhibit I. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

11. Studies performed under the removal actions and the RI/FS for the Butte Site, have documented the presence, release, and threat of release of arsenic, cadmium, copper, lead, mercury, zinc and other mining related substances at and from the facilities within and adjacent to the BPSOU and the Butte Site. Arsenic, cadmium, copper, lead, mercury and zinc, as well as other substances from mining waste found in and around the Butte Site, are hazardous substances as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

12. Humans and wildlife are at risk from exposure to the contaminated soils in the BPSOU and Butte Site. In particular, current and future residential, commercial/industrial, and recreational users at BPSOU and the Butte Site may be exposed to contaminated soils and dust containing arsenic, lead and mercury via inhalation and ingestion pathways at levels which are harmful. Run-off and ground water contributions from arsenic, copper, lead, mercury, and zinc in the BPSOU facilities may enter nearby streams and cause damage to the recreational fisheries and related organisms in streams in the area. The BPSOU facilities are also a source of releases or threat of releases of hazardous substances or pollutants or contaminants into groundwater beneath and surrounding the area which, if uncontrolled by institutional controls, could be used for domestic or other purposes at harmful levels. Additional information on the human health and environmental risks at the BPSOU and Butte Site is presented in the several human health risk assessments and the Baseline Ecological Risk Assessment for the BPSOU, all of which are identified in the ROD and contained in the administrative record.

13. From about 2006 to the present time, the Respondents, with EPA oversight, conducted remedial design activities and studies required by the ROD. Respondents have also implemented certain remedial actions and operation and maintenance actions required by the ROD and resulting from the remedial design activities. Remedial design and remedial action is not yet complete and further remedial design and remedial action work, along with associated operation and maintenance activities, remains to be done. The current status of remedial design, remedial action, and operation and maintenance activities is described in the Partial Remedial Implementation Work Plan, Exhibit 3 to this Order.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

14. Based on the preceding Findings of Fact and the administrative record for the Butte Site, EPA has made the following conclusions of law and determinations:

- a. The Butte Site and the BPSOU contain "facilities" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9);
- b. Each Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21);
- c. Each Respondent is a liable party under sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607, and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a) in the manner described below;
- d. Each Group 1 Respondent is jointly and severally liable, as among Group 1 Respondents, for all actions required by the Order for those obligations and responsibilities designated as applicable to Group 1 Respondents or Group 1 Responsible Parties;
- f. Group 2 Respondents are jointly and severally liable for actions required by the Order for the Lower Butte Site, and each Group 2 Respondent is responsible for actions required by the Order for those obligations and responsibilities designated as applicable to Group 2 Respondents or Group 2 Responsible Parties, and for its own railroad property;
- g. Each Respondent is jointly and severally liable for all actions required of this Order for those obligations and responsibilities not designated as applicable to Group 1 Respondents or Group 1 Responsible Parties or Group 2 Respondents or Group 2 Responsible Parties.
- h. Substances such as arsenic, copper, mercury, lead and zinc found at the Butte Site and the BPSOU are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and these hazardous substances have been, are being, and threaten to be released at or from the BPSOU and Butte Site into the soils, groundwater, surface water, air, sediments, and dust;
- i. The presence of hazardous substances at the Butte Site and the BPSOU, and the past, present, or potential future migration of hazardous substances described in Section II of this Order constitute an actual or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

- j. The actual or threatened release of one or more hazardous substances from the facilities may present an imminent and substantial endangerment to public health or welfare or the environment; and
- k. The actions required by this Order are necessary to protect the public health and welfare and the environment.

IV. NOTICE TO THE STATE

15. EPA has notified the State of Montana (State), through DEQ, of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and provided for State involvement in the initiation, development, and selection of the remedial action, and will continue to provide for State involvement in design and implementation of the remedy, in accordance with section 121(f) of CERCLA, 42 U.S.C. § 9621(f). All EPA decisions under this Order will be made in consultation with DEQ. EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by this Order.

V. ORDER

16. Respondents are hereby ordered to comply with all requirements of this Order, including but not limited to, all attachments to this Order and all documents incorporated by reference into this Order or its attachments, as described above and below and as indicated in the Partial Remedy Implementation Work Plan, Exhibit 3. All listed Exhibits are attachments to this Order.

17. The Group 1 Respondents are jointly and severally responsible, as among Group 1 Respondents, for those obligations and responsibilities designated as Group 1 Responsible Party obligations in the Partial Remedy Implementation Work Plan, Exhibit 4. Group 2 Respondents shall be jointly and severally responsible, as among Group 2 Respondents, for those obligations and responsibilities designated as Group 2 Responsible Party obligations in the Partial Remedy Implementation Work Plan, Exhibit 4. Certain activities are site wide obligations and requirements applicable to both Group 1 and Group 2 Respondents, and those obligations and requirements - designated as Responsible Party obligations in the Partial Remedy Implementation Work Plan, Exhibit 4 - are joint and several. In the event of the insolvency or other failure of one of the Group 1 Respondents to implement a Group 1 obligation or requirement of this Order, the remaining Group 1 Respondents shall complete all such obligations or requirements. In the event of the insolvency or other failure of one of the Group 2 Respondents to implement a Group 2 obligation or requirement of this Order, the remaining Group 2 Respondents shall complete all such obligations or requirements. In the event of the insolvency or other failure of one of the Respondents to implement a Responsible Party

obligation or requirement of this Order, the remaining Respondents shall complete all such obligations or requirements.

VI. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

“AR” shall mean the Respondent, Atlantic Richfield Company, its divisions and subsidiaries, including ARCO Environmental Remediation L.L.C. (AERL), and any predecessors in interest. It shall also mean any successor in interest to the extent that any such successor’s liability at the Butte Site derives from the liability of the Atlantic Richfield Company, its divisions and subsidiaries, including AERL, and any predecessor in interest.

“BNSF” shall mean the Respondent, BNSF Railway Company, and any predecessor in interest. It shall also mean any successor in interest to the extent that any such successor’s liability at the Butte Site derives from the liability of the BNSF Railway Company, and any predecessors in interest.

“BSBC” shall mean Butte Silver Bow County, including its agencies and divisions.

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

“CFRSSI LAP” shall mean the Clark Fork River Superfund Site Investigations Laboratory Analytical Protocol (AR/PTI, April 1992), as subsequently amended as of the Effective Date.

“CFRSSI QAPP” shall mean the Clark Fork River Superfund Site Investigations Quality Assurance Project Plan (AR/PTI and EPA, May 1992), as subsequently amended as of the Effective Date.

“Contractor” means any person, including the contractors, subcontractors, consultants, or agents retained or hired by any Respondent to undertake any Work under this Order.

“Day” means calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period

shall run until the end of the next working day. Time will be computed in accordance with Rule 6 of the Federal Rules of Civil Procedure, unless otherwise specified.

“Deliverable” means any written product, including but not limited to, plans, reports, memoranda, data, and other documents that any Respondent or group of Respondents must submit to EPA under this Order.

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

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies.

“Group 1 Respondents” or **“Group 1”** shall be AR, BSBC, Inland, and RARUS.

“Group 2 Respondents” or **“Group 2”** shall be BNSF and UP.

“Inland” shall mean the Respondent, Inland Properties Incorporated, its divisions and subsidiaries, and any predecessor in interest. It shall also mean any successor in interest to the extent that any such successor’s liability at the Butte Site derives from the liability of Inland Properties Incorporated and its divisions or subsidiaries, and any predecessor in interest.

“Lower Butte Site” shall be that portion of the Butte Site identified in the map attached as Exhibit 4. The Lower Butte Site includes the portion of Silver Bow Creek which runs through the area shown in the maps attached as Exhibit 4 including its sediments and floodplain. The Lower Butte Site also includes the alluvial groundwater beneath and near the surface area shown on Exhibit 5 which contains hazardous substances from the various facilities and sources within the BPSOU.

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

“Operation and Maintenance” or **“O&M”** means all activities required under any approved short term or long term Operation and Maintenance Plan or under the Butte Reclamation Evaluation System document. Any approved Operation and Maintenance Plan is incorporated into this Order.

“Order” means this Order, the exhibits attached to this Order, the EPA-approved work plan, and all documents incorporated into this Order by reference or according to the procedures set forth herein.

“Partial Remedy Implementation Work Plan” shall mean the plan attached as Exhibit 3 to this Order, which is incorporated by reference into this Order and is fully enforceable hereunder.

“Performance Standards” means those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the BPSOU ROD (including but not limited to applicable and relevant and appropriate requirements identified in Appendix A to the BPSOU ROD and Appendix A to the Partial Remedial Action Implementation Work Plan, Exhibit3) and the BPSOU ESD, and/or described in the Partial Remedy Implementation Work Plan, Exhibit 4, that the remedial action and other Work performed under this Order must comply with, attain and maintain.

“RARUS” shall mean the Respondent, Rarus Railway Company, its divisions and subsidiaries, and any predecessor in interest. It shall also mean any successor in interest to the extent that any such successor’s liability at the Butte Site derives from the liability of the Rarus Railway Company and its divisions or subsidiaries, and any predecessor in interest.

“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).

“Record of Decision” or **“ROD”** means the EPA Record of Decision for the BPSOU and Butte Site, executed by EPA on September 21, 2006, and all attachments thereto, attached hereto as Exhibit1, and incorporated herein by reference.

“Remedial Action” or **“RA”** means those activities, except for operation and maintenance, to be undertaken by Respondents to implement the final plans and specifications embodied any approved remedial design work plan or remedial action work plan or similar plans as required by the Partial Remedy Implementation Work Plan, Exhibit3, and including any additional activities required under Sections X, XI, XII, XIII, and XIV of this Order.

“Remedial Design” or **“RD”** means any actions or studies required to develop any final remedial design plan or remedial action work plan or similar plans as required by the Partial Remedy Implementation Work Plan, Exhibit3, and including any additional activities required to design actions required under Section X, XI, XII, XIII, and XIV of this Order.

“Respondents” shall mean AR, Inland, BNSF, RARUS, UP, and BSBC.

“Site” or **“Butte Site”** means the Butte Priority Soils Operable Unit (BPSOU) and other areas shown on the map attached as Appendix B to the Partial Remedy Implementation Work Plan, Exhibit 3. In addition to the surface area identified as the BPSOU in this map, the Butte Site includes homes in areas that are adjacent to the BPSOU that have lead, arsenic, or mercury in homes and associated yards, gardens and play areas that will be addressed in the manner described in the Residential Metals Abatement Plan (April 2010) and this adjacent area is also shown on this map. The Butte Site includes the portion of Silver Bow Creek and the portion of Blacktail Creek which run through the BPSOU area shown in the map attached as Appendix B to the Partial Remedy Implementation Work Plan, Exhibit 3, including any sediments and floodplain material, and the Granite Mountain Memorial Interpretive Areas. The Butte Site also includes the alluvial groundwater beneath the BPSOU surface area shown on the map attached as Appendix B to the Partial Remedy Implementation Work Plan, Exhibit 3, which contains hazardous substances from the various facilities and sources within the BPSOU.

“State” shall mean the State of Montana, including all of its departments, agencies, and instrumentalities.

“UP” shall mean the Respondent, Union Pacific Railroad Company, and any predecessor in interest. It shall also mean any successor in interest to the extent that any such successor’s liability at the Butte Site derives from the liability of the Union Pacific Railroad Company, and any predecessor in interest.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

“Work” means all activities Respondent is required to perform under this Order, including remedial design, remedial action, operation and maintenance, and any other activities necessary to fulfill the requirements of this Order.

VII. NOTICE OF INTENT TO COMPLY

19. Respondents shall each provide, not later than 7 days after the effective date of this Order, written notice to the EPA Remedial Project Manager stating whether it will unconditionally and unequivocally comply with this Order. If Respondent does not unconditionally and unequivocally commit to perform the Work as provided by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, based on facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any of Respondent's assertions.

VIII. PARTIES BOUND

20. This Order shall apply to and be binding upon Respondents as described above and each corporate Respondent's directors, officers, employees, agents, successors, and assigns. No change in the ownership, corporate status, or other control of any Respondent, nor any transfer of assets or real or personal property by any Respondent, shall alter any of the Respondent's responsibilities under this Order.

21. During the period in which this Order is in effect, each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets within the Butte Site, property rights within the Butte Site, or stock is transferred to the prospective owner or successor. Respondents shall each provide a copy of this Order to each Contractor and laboratory retained to perform any Work under this Order, within 5 days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also each provide a copy of this Order to each person representing Respondent with respect to the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with this Order. Each contractor retained to perform Work shall be deemed to be related by contract to Respondent within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order as described above and for ensuring that contractors employed by the Respondent comply with this Order, and perform any Work in accordance with this Order.

22. Not later than 30 days prior to any transfer of any real property interest in any property included within the Site, each Respondent who so transfers shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name and principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

23. Respondents shall prepare, implement, perform, and complete all actions required by this Order (in the manner described above), including all actions required under approved plans, in accordance with the standards, criteria, specifications, requirements, and schedule set forth herein and in the Partial Remedy Implementation Work Plan, Exhibit 3. All Work under this Order is subject to oversight by and the prior approval of EPA. Undertaking any on-Site physical Work activity without prior approval of EPA is a violation of this Order.

24. All Work shall be conducted and completed in accordance with CERCLA, the NCP, pertinent EPA guidance, and any amendments thereto which become effective prior to the date of completion of Work under this Order. Respondents shall be responsible for identifying and using other guidelines, policies, procedures, and information that may be appropriate for performing Work.

25. All Work shall be consistent with the ROD and ESD and the Performance Standards set forth in the ROD, ESD and the Partial Remedy Implementation Work Plan, Exhibit 3, including all applicable or relevant and appropriate requirements. Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards as described above. Nothing in this Order, or in EPA's approval of any document prepared by EPA under this Order, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the action will achieve Performance Standards. Respondents' individual or group compliance with such approved documents does not foreclose EPA from seeking additional Work to achieve Performance Standards.

26. Respondents shall employ sound scientific, engineering, and construction practices in performing Work under this Order. All tasks shall be under the direction and supervision of qualified personnel with experience in the types of tasks required for implementation of the Work.

27. All Work shall be under the direction and supervision of a qualified project manager. Within 10 days after the effective date of this Order, Respondents shall each notify EPA in writing of the name, address, telephone number, and qualifications of the respective Respondent's project manager and the identity and qualifications of the primary support entities, staff, and contractors proposed to be used in carrying out Work under this Order. With respect to any proposed project manager, Respondent shall demonstrate that the proposed project manager

is sufficiently qualified. If at any time any Respondent proposes to use a different project manager, support entities, staff, or contractors, that Respondent shall notify EPA and provide similar information at least 14 days before such persons perform any Work under this Order.

28. EPA will review each Respondent's selection of and changes in project managers, support entities, staff, or contractors according to the terms of this Section and Section XIV of this Order. If EPA disapproves of the selection of project managers, support entities, staff, or Contractors by a Respondent, that Respondent shall submit to EPA within 14 days after receipt of EPA's disapproval, a list of project managers, support entities, staff, or contractors that would be acceptable to Respondent. EPA will thereafter provide written notice to that Respondent of the names that are acceptable to EPA. That Respondent may then select any approved name or names from that list and shall notify EPA of its selection(s) within 14 days of receipt of EPA's written notice.

29. Respondents shall, as appropriate and in accordance with the responsibilities described above, no later than 10 days prior to any off-Site shipment of hazardous substances from the Site to an out-of-State waste management facility, provide written notification of such shipment of hazardous substances to the appropriate state environmental official in the receiving state, to EPA, and to DEQ. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed 10 cubic yards.

- a. The notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which hazardous substances are to be shipped; (2) the type and quantity of hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method and route of transportation. Respondents shall notify EPA, DEQ, and the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.
- b. The identity of the receiving facility will be determined by Respondents at the earliest possible time. Respondents shall provide all relevant information, including the information noted above, as soon as practicable after a decision is reached, but in no event later than the time specified in this Paragraph.

30. Respondents shall cooperate with EPA in providing information regarding the Work to the public. If requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

X. FAILURE TO ATTAIN PERFORMANCE STANDARDS

31. In the event that EPA determines that response activities in addition to those set forth in the Partial Remedy Implementation Work Plan, Exhibit 4, are necessary to attain Performance Standards or accomplish the selected remedy for the Butte Site, EPA may notify Respondents, as EPA determines appropriate, that additional response actions are necessary.

32. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional response activities are necessary to meet Performance Standards, Respondents so notified shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of Sections IX, XVI, and XVII of this Order. Upon EPA's approval of the plan pursuant to Section XIV, Respondents so notified shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

XI. EPA PERIODIC REVIEW

33. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the RA and Work to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondents shall conduct the studies, investigations, or other response actions determined necessary by EPA for EPA to conduct its review. As a result of any review performed under this Paragraph, Respondents may be required to perform additional Work or to modify Work previously performed.

XII. ADDITIONAL RESPONSE ACTIONS

34. EPA may determine that work, in addition to that identified in this Order or in the Partial Remedy Implementation Work Plan, Exhibit 3, may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents, as determined by EPA, to submit a work plan for additional response activities. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved deliverable.

35. Not later than 30 days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents so notified shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents so notified shall implement the work plan according to the standards, specifications, and schedule in this Order and the approved work plan. Respondents so notified shall notify EPA of its intent to perform such additional response activities within 7 days after receipt of EPA's request for additional response activities.

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

36. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA and DEQ. If neither the EPA Remedial Project Manager nor the Alternate Project Manager are available, Respondents shall notify the EPA Emergency Response Branch, EPA Region 8. Respondents shall take such action in consultation with the EPA Remedial Project Manager and in accordance with all applicable provisions of law and of this Order. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes action instead, Respondents shall reimburse the United States for all costs of the response action not inconsistent with the NCP.

37. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order any action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site or at or from SBCB.

XIV. EPA REVIEW OF DELIVERABLES

38. After review of any Deliverable which must be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission, (b) approve the submission with its own modifications, (c) disapprove the submission and direct Respondent(s) to re-submit the document after incorporating EPA's comments, or (d) disapprove the submission and perform all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or similar term means the action described in phrases (a) or (b) of this Paragraph.

39. In the event of approval or approval with modifications by EPA, Respondents, as described above, shall proceed to take any action required by the Deliverable, as approved or modified by EPA.

40. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, as described above, within 7 days or such time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the deliverable for approval. Notwithstanding the notice of disapproval, or approval with modification, Respondents shall proceed, as described above and at the direction of EPA, to take any action required by any non-deficient portion of the deliverable.

41. Any failure of Respondents to obtain full approval of a Deliverable when required is a violation of this Order.

XV. REPORTING REQUIREMENTS

42. Group 1 and Group 2 Respondents shall separately submit to EPA and DEQ monthly progress reports containing, at a minimum, the following information:

- a. A description of actions taken to comply with this Order, including plans and actions completed, during the previous month;
- b. A description of problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate any problems or delays;
- c. Any change orders, nonconformance reports, claims made, and actions taken to rectify problems;
- d. Work planned for the next month with schedules relating such Work to the overall project schedule as described in the Partial Remedy Implementation Work Plan, Exhibit 4, and
- e. Except for information previously submitted, copies of inspection logs and results of all sampling, tests, and other data (including validated analytical data with supporting documentation on Contract Laboratory Program Form I's or in a similar format) received or produced by Respondents during the course of Work during the previous month.

These reports shall be submitted on or before the 10th day of each month from the effective date of the Order and each month thereafter until EPA determines that reports are no longer required.

43. During construction, Group 1 and Group 2 Respondents shall each record information each day on construction activities discussing, at a minimum, the daily activities, field adjustments, change orders, summaries of problems and actions to rectify problems, and such information as is customary in the industry. Information recorded on a given day shall be available to EPA for inspection the following day. The daily records shall be compiled and delivered to EPA and DEQ monthly with the progress reports required under the preceding Paragraph, if requested by EPA or DEQ.

44. Respondents (in the manner described above) shall prepare and submit to EPA and DEQ O&M reports as required under any approved short term or long term O&M Plan (if no specific requirements for reporting is contained in any approved O&M Work Plan, then quarterly) that include, at a minimum, the following elements:

- a. A description of O&M activities performed during the reporting period;
- b. A description of the performance of each component of the remedial action requiring O&M, including a summary of any monitoring data demonstrating the performance of the remedy and its effectiveness in meeting Performance Standards;
- c. A description and summary of the results of all monitoring performed in connection with the remedy;
- d. A statistical evaluation of the monitoring data and a conclusion as to whether the results exceed appropriate criteria, and whether any exceedances necessitate the implementation of contingency measures;
- e. Identification of any problems or potential problems and a description of all steps taken or to be taken to rectify the problems;
- f. An appendix containing all validated data and supporting documentation on Contract Laboratory Program Form I's or in a similar format collected during the reporting period and not previously submitted; and
- g. Copies of any O&M training materials and a record of employee attendance at training sessions.

O&M reports shall be submitted on or before the 10th day of January, April, July, and October for quarterly reporting or as specifically described in any approved short term or long term O&M Plan commencing in July 2011, and continuing until EPA notifies Respondents that the frequency of reporting may be reduced.

XVI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

45. Respondents shall ensure that Work performed, samples taken, and analyses conducted conform to the requirements of this Order and the EPA-approved sampling and analysis plan. Each Respondent will ensure that its field personnel are properly trained in the use of field equipment and chain-of-custody procedures.

46. To provide quality assurance and maintain quality control, Respondents shall use the approved quality assurance, quality control, and chain of custody procedures for all samples for which it or they are responsible in accordance with the Clark Fork River Superfund Site Investigations Quality Assurance Project Plan (CFRSSI QAPP) and any amendments made thereto during the course of the implementation of this Order for sampling required of any

Respondent or group of Respondents. Respondents shall ensure that EPA and DEQ personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA and DEQ pursuant to the CFRSSI QAPP for quality assurance monitoring. Respondents shall ensure that the laboratories they use for the analysis of samples taken pursuant to the Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the CFRSSI Laboratory Analytical Protocol, and any amendments made thereto during the course of the implementation of this Order. Respondents shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth in the QAPP.

47. Upon request, Respondents shall allow split or duplicate samples to be taken by EPA and DEQ or their authorized representatives. Respondents shall give EPA and DEQ reasonable notice of any sample collection activity. In addition, EPA and DEQ shall have the right to take any additional samples that EPA or DEQ deem necessary. Upon request, EPA and DEQ shall allow Respondents to take split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work.

48. Respondents as described above shall submit to EPA and DEQ copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the RA and/or the implementation of this Order within thirty days of obtaining verified results of any such sampling, or upon request (for verified or unverified sampling) by EPA.

49. Notwithstanding any provision of this Order, EPA and DEQ retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, CECRA, and any other applicable federal and State statutes or regulations.

XVII. COMPLIANCE WITH APPLICABLE LAWS

50. All Work shall be performed in accordance with the requirements of all federal and State laws and regulations. Except as provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site or within the contiguous Clark Fork Basin Superfund Sites. Where any portion of the Work requires a federal or State permit or approval, Respondents as described above shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

51. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

52. All materials removed from the Clark Fork Basin collection of listed Superfund Sites shall be disposed of or treated at a facility approved by EPA and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); with off-site policy regulations at 40 C.F.R. 300.440; and with all other applicable federal, State, and local requirements.

XVIII. REMEDIAL PROJECT MANAGER

53. The Butte Site EPA Remedial Project Manager is:

Sara Sparks, Remedial Project Manager
EPA Region 8 Butte Office
Federal Building
400 North Main St., Room 339
Butte, MT 59701
(406) 782-3264

The Alternate Remedial Project Manager is:

Joe Vranka, 8MO
EPA Region 8 Montana Office
Baucus Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59624
(406) 457-5001

EPA's Butte Site Attorney is:

D. Henry Eisen, Attorney, 8ENF-L/MO
EPA Region 8 Montana Office
Baucus Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59624
(406) 457-5030

DEQ's Butte Site Project Officer is:

Joe Griffin, State Project Officer
Montana Department of Environmental Quality

Remediation Division
P.O. Box 200901
Helena, MT 59620
(406) 841-5042

DEQ's Butte Site Attorney is:

Mary Capdeville, Attorney
c/o Montana Department of Environmental Quality
Remediation Division
P.O. Box 200901
Helena, MT 59620
(406) 444-0225

EPA may change its Remedial Project Manager or Alternate Project Manager or Site Attorney at any time and will inform Respondents of such changes. DEQ may change its Project Officer or Site Attorney at any time and will inform Respondents of such changes.

54. The EPA Remedial Project Manager and Alternate Project Manager shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP. The EPA Remedial Project Manager and Alternate Project Manager shall have authority, consistent with the NCP, to halt any Work required by this Order, and to take any necessary response action.

55. All communications, whether written or oral, from Respondents to EPA shall be directed from Respondent's project manager(s) or other authorized representative or personnel to the EPA Remedial Project Manager or Alternate Project Manager. All communications, whether written or oral, from Respondents to DEQ shall be directed from Respondent's project manager(s) or authorized representative or personnel to the DEQ Project Officer. Respondents shall as described above submit to EPA's Remedial Project Manager two copies, to EPA's Site Attorney one copy, and to DEQ's Project Manager one copy and DEQ's Site Attorney one copy of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall hand-deliver or send these documents by regular or overnight mail. A copy of all written notices under this Order sent to EPA shall be sent simultaneously to DEQ.

XIX. ACCESS AND DATA/DOCUMENT AVAILABILITY

56. Respondent shall allow EPA, the State, and their authorized representatives to enter and move freely about any and all property owned or controlled by Respondents at the Site and off-Site areas subject to or affected by the Work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their representatives or contractors pursuant to this Order; reviewing the progress of Respondents in carrying out the terms of this Order; conducting such tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA and the State by Respondents. Respondents shall allow EPA, the State, and their authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. Nothing herein shall be interpreted as limiting or affecting the State's right of entry or inspection authority under State or federal law.

57. If the Site, any off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the Work, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use best efforts to obtain, Site access agreements from the present owner(s) within 30 days of the effective date of this Order, unless such access has already been secured.

- a. Respondents' collective or individual best efforts shall include providing reasonable compensation to any on or off-Site property owner.
- b. Access agreements shall provide access for EPA, the State, and their authorized representatives, and Respondents and their contractors and shall specify that Respondent(s) are not EPA's or DEQ's representative with respect to the Site or Site activities.
- c. If not already obtained, copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. If access agreements are not obtained within the time referenced above, Respondents as described above shall immediately notify EPA of its failure to obtain access.

58. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform response actions with EPA contractors, or may terminate the Order if Respondents cannot obtain access agreements. Respondents shall

reimburse EPA for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents. If EPA performs tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into the Work it performs under this Order.

59. Respondents shall provide to EPA and DEQ upon request, copies of all documents and information within each Respondent's possession and/or control or that of its contractors relating to activities at the Site or to the implementation of this Order, 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. Respondents shall also make available to EPA and DEQ for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

60. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents.

XX. RECORD PRESERVATION

61. For a period of 10 years after Work is completed under this order, Respondents shall preserve and retain all records and documents in its possession or control and in the possession or control of its contractors, on and after the date of signature of this Order, that relate in any manner to the Site, Respondents' potential liability under CERCLA, or performance of Work under this Order. At the conclusion of this document-retention period, Respondents shall notify the United States at least 90 days prior to the destruction of any such records or documents, and upon request by the United States, Respondents shall deliver any such records or documents to EPA at no cost to EPA.

XXI. DELAY IN PERFORMANCE

62. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by the Respondent or Respondents (in the manner described above) under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order

shall not affect any Respondent's or group of Respondents' obligations to full perform all obligations under the terms and conditions of this Order.

63. Each Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order for which the Respondent is responsible in the manner described above. Such notification shall be made by telephone to EPA's Remedial Project Manager or Alternate Project Manager within forty eight (48) hours after the Respondent first knew or should have known that a delay might occur. Each Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, the Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should be held strictly accountable for failing to comply with any relevant requirement of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXII. ASSURANCE OF ABILITY TO COMPLETE WORK

64. Group 1 and Group 2 Respondents separately shall establish and maintain financial assurance sufficient to complete all Work covered under this Order. At a minimum, Group 1 and Group 2 Respondents shall demonstrate financial assurance in an amount no less than the estimate of the cost for the Work designated for each group as determined by each group and approved by EPA. Specific requirements are set forth below.

- a. Not later than thirty (30) days after the effective date of this Order, Group 1 and Group 2 Respondents separately shall submit to EPA for approval an estimate of the cost of the Work each group is required to perform and a draft instrument for financial assurance in accordance with the options described in paragraph 63 below, in accordance with EPA model documents for each option. Such financial assurance must be sufficient to fund the performance of all Work the relevant group is required to perform, including all Operation and Maintenance activities, as specified in the Partial Remedial Action Work Plan, Exhibit 3. Not later than thirty (30) days after EPA approval of the amount and form, Group 1 and Group 2 Respondents shall establish and maintain the approved financial assurance instrument(s). The amount of the financial assurance established and maintained shall be an amount as approved by EPA.
- b. Each financial instrument obtained pursuant to this Section must be established and used solely for the purpose of conducting the remediation activities required by this Order at and for this Site. Each financial assurance instrument established

and maintained by the Group 1 and Group 2 Respondents in accordance with this Section must allow the funds provided in the financial assurance to be available in the event that the Group 1 or Group 2 Respondents collectively prove unable or unwilling to undertake any actions required of that group while it is in effect so that the activities covered by the instrument may be completed by EPA.

- c. Group 1 and Group 2 Respondents shall review their respective financial assurance mechanisms annually to ensure they are still in effect and funded sufficiently to cover the performance of the remaining Work and other obligations under this Order required of each group. If at any time the amount of funds secured in the financial instrument is insufficient to perform the remaining Work and other obligations under this Order, Group 1 and/or Group 2 Respondents shall provide written notice to EPA within thirty (30) days after the amount of financial instrument becomes insufficient. The written notice shall describe what actions have been or will be taken to fund the instrument adequately.
- d. In the event that EPA determines at any time that the financial assurance pursuant to this Section is inadequate, Group 1 and/or Group 2 Respondents, as appropriate, shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for EPA's approval one of the other forms of financial assurance authorized in paragraph 63.
- e. If Group 1 or Group 2 Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount established as described above, Group 1 or Group 2 Respondents may, on any anniversary date of entry of this Order, or at any other time agreed to by the parties, request the amount of the financial assurance provided under this Section be reduced to the estimated cost of the remaining work to be performed. Group 1 and/or Group 2 Respondents shall submit a proposal for such reduction to EPA in accordance with the requirements of this Section. Upon approval, Group 1 and/or Group 2 Respondents will initiate steps to reduce the amount of assurance secured in the financial document.
- f. Group 1 and Group 2 Respondents shall each submit initial and annual re-certifications or renewed financial assurance, from the Effective Date of this Order, financial assurance documents pursuant to this Section to the EPA attorney and to EPA Region 8 for review at the following address:

Daniela Golden, 8ENF-RC
EPA Region 8
1593 Wynkoop Street
Denver, CO 80202

- g. Group 1 or Group 2 Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any Work required under this Order.

65. Group 1 and Group 2 Respondents shall demonstrate their ability to complete the Work this Order requires of their respective groups and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA, within 30 days from the effective date of this Order, one of the following: (1) a performance bond; (2) a letter of credit; or (3) a surety bond. The selected financial assurance mechanism will allow EPA to determine that Respondents have sufficient assets available to perform the Work required of their respective groups.

66. Not later than 10 days after the Effective Date, each Respondent shall submit to EPA a certification stating that each Respondent (or its Contractor(s)) has adequate insurance coverage or indemnification for injuries or damages to persons or property which may result from the activities that it has conducted or were conducted on its behalf pursuant to this Order. Each Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXIII. UNITED STATES NOT LIABLE

67. The United States, by issuance of this Order, and the State assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. EPA, DEQ, the United States, and the State may not be deemed to be parties to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

68. Respondents shall indemnify, save, and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States or the State, including but not limited to, attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representative(s) under section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

XXIV. ENFORCEMENT AND RESERVATIONS

69. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to the Site and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support the oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

70. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the Work or any response action (or any portion of the Work or response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

71. Nothing in this Order shall preclude EPA or DEQ from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

72. Notwithstanding any provision of this Order, the United States and the State hereby retain all of their information gathering, inspection, and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

73. In the manner described above, Respondents shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$32,500 for each day in which Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. In addition, failure to provide response action properly under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

74. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

75. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order as described above not invalidated by the court's order.

XXV. EFFECTIVE DATE AND COMPUTATION OF TIME

76. This Order shall be effective 45 days after signing. All times for performance of ordered activities shall be calculated from this effective date unless specifically noted otherwise.

XXVI. OPPORTUNITY TO CONFER

77. Respondents may, individually or collectively, within 10 days after the date this Order is signed, request a conference with EPA to discuss this Order. The conference must be held within 40 days after the date this Order is signed, between the dates of August 4 and August 30, 2011, on a date mutually agreeable between EPA and the requesting Respondent(s). The conference shall be limited to discussion of issues involving the implementation of the response actions required by this Order and the extent to which Respondent(s) intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give any Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's or Respondents' request, Respondent(s) may appear in person or by an attorney or other representative. Such conference shall not delay the performance of any Work.

78. Requests for a conference must be by telephone followed by written confirmation mailed that day to:

D. Henry Elsen
Sr. Enforcement Attorney
EPA Region 8 Montana Office
10 West 15th Street
Suite 3200
Helena, MT 59624
(406) 457-5030

IT IS SO ORDERED

BY: Julie A. DalSoglio DATE: July 20, 2011
Julie A. DalSoglio, Director
Montana Office
EPA Region 8

