

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)
 St. Maries Creosote Site) ADMINISTRATIVE ORDER ON
) CONSENT FOR REMEDIAL
) INVESTIGATION AND
) FEASIBILITY STUDY
)
 CARNEY PRODUCTS COMPANY, LTD.)
 AND)
 CITY OF ST. MARIES) U.S. EPA Docket No.
) CERCLA-10-2001-0137
 RESPONDENTS.)
)
)
 Proceeding Under Sections 104, 122(a), and 122(d)(3) of)
 the Comprehensive Environmental Response,)
 Compensation, and Liability Act, as amended,)
 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3).)

TABLE OF CONTENTS

| | | | |
|--------|---|----|----|
| I. | INTRODUCTION | 2 | |
| II. | JURISDICTION | 2 | |
| III. | PARTIES BOUND | 3 | |
| IV. | STATEMENT OF PURPOSE | 4 | |
| V. | FINDINGS OF FACT | 4 | |
| VI. | CONCLUSIONS OF LAW AND DETERMINATIONS | 6 | |
| VII. | NOTICE | | 7 |
| VIII. | WORK TO BE PERFORMED | 7 | |
| IX. | BASELINE RISK ASSESSMENT | 11 | |
| X. | MODIFICATION OF THE WORK PLAN | 12 | |
| XI. | QUALITY ASSURANCE | 13 | |
| XII. | FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, AND ADMINISTRATIVE RECORD. | 13 | |
| XIII. | PROGRESS REPORTS AND MEETINGS | 14 | |
| XIV. | SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY | 14 | |
| XV. | DESIGNATED PROJECT COORDINATORS | 17 | |
| XVI. | OTHER APPLICABLE LAWS | 19 | |
| XVII. | RECORD PRESERVATION | 19 | |
| XVIII. | DISPUTE RESOLUTION | 19 | |
| XIX. | DELAY IN PERFORMANCE/STIPULATED PENALTIES | 20 | |
| XX. | FORCE MAJEURE | | 23 |

| | | |
|---|---|----|
| 1 | XXI REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS . . . | 25 |
| | XXII RESERVATIONS OF RIGHTS | 28 |
| 2 | XXIII COVENANT NOT TO SUE | 29 |
| | XXIV CONTRIBUTION PROTECTION | 30 |
| 3 | XXV DISCLAIMER | 30 |
| | XXVI OTHER CLAIMS | 31 |
| 4 | XXVII FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION . . . | 31 |
| | XXVIII EFFECTIVE DATE AND SUBSEQUENT MODIFICATION. | 33 |
| 5 | XXIX TERMINATION AND SATISFACTION | 34 |
| | XXX SIGNATORIES | 34 |

6 Appendix A: STATEMENT OF WORK

7
8

9 I. INTRODUCTION

10 1. This Administrative Order on Consent (Consent Order or Order) is entered into voluntarily
11 by the United States Environmental Protection Agency (EPA), the Coeur d’Alene Tribe (the Tribe),
12 Carney Products Company, Ltd. and the City of St. Maries (collectively the Respondents). The
13 Consent Order concerns the preparation of, performance of, and reimbursement for certain costs
14 incurred by EPA and the Tribe in connection with a Remedial Investigation and Feasibility Study
15 (RI/FS) at the St. Maries Creosote Site, located within the City of St. Maries, Idaho (hereinafter, the
16 "Site").

17 II. JURISDICTION

18 2. This Consent Order is issued under the authority vested in the President of the United States
19 by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response,
20 Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9604, 9622(a), and
21 9622(d)(3). This authority was delegated to the Administrator of EPA on January 23, 1987, by
22 Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators
23 on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been redelegated by the
24 Regional Administrator to the Director, Office of Environmental Cleanup, by EPA Region 10 Regional
25 Delegation No. R10-14-14-C.

26

1 their services, whichever is later. Respondents shall condition any such contracts upon satisfactory
2 compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are
3 responsible for compliance with this Consent Order and for ensuring that their subsidiaries,
4 employees, contractors, consultants, subcontractors, agents, and attorneys comply with this Consent
5 Order.

6 IV. STATEMENT OF PURPOSE

7 7. In entering into this Consent Order, the objectives of EPA, the Coeur d'Alene Tribe, and the
8 Respondents are: (a) to determine the nature and extent of contamination and any threat to the public
9 health, welfare, or the environment caused by the release or threatened release of hazardous
10 substances, pollutants, or contaminants at or from the Site or facility, by conducting an RI; (b) to
11 determine and evaluate alternatives for remedial action (if any) to prevent, mitigate, or otherwise
12 respond to or remedy any release or threatened release of hazardous substances, pollutants, or
13 contaminants at or from the Site or facility, by conducting an FS; (c) to reimburse response and
14 oversight costs incurred by EPA and the Tribe with respect to this Consent Order; and (d) to resolve
15 claims for past response costs incurred by EPA and the Tribe at the Site.

16 8. The activities conducted under this Consent Order are subject to approval by EPA and shall
17 provide all appropriate necessary information for the RI/FS and for a Record of Decision that is
18 consistent with CERCLA and the National Oil and Hazardous Substance Pollution Contingency Plan
19 (NCP), 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in
20 compliance with all applicable EPA regulations, policies, and procedures, and with EPA guidance as
21 provided in paragraph 25 of this Consent Order.

22 V. FINDINGS OF FACT

23 9. The St. Maries Creosote Site is located in Benewah County, Idaho, in the City of St.
24 Maries, Idaho (pop. 2500) along the south bank of the St. Joe River, near Railroad Avenue and 10th
25 Street. The Site is located within the boundaries of the Coeur d'Alene Indian Reservation. The
26 facility operated as a creosote wood pole treating plant beginning in the late 1930s and was later

1 dismantled and the area leveled. The Site was most recently used for pole peeling, sorting, and
2 storage.

3 10. In December 1998, the City of St. Maries reported a product sheen on the bank and in the
4 water of the St. Joe River to the federal National Response Center. On January 26, 1999, EPA issued
5 a Unilateral Administrative Order, Docket No. CERCLA-10-99-0078, under the authority of sec.
6 106(a) of CERCLA, to the City of St. Maries (the City), who has leased the property to various
7 entities since the 1930s, and Carney Products Company, Ltd. (Carney Products), the current lessee of
8 the property, to remove creosote and creosote contaminated soil on the river bank, and to conduct a
9 Site investigation to characterize soil and groundwater contamination in and around the area of the
10 former wood treating facility.

11 11. In February 1999, the Respondents conducted an environmental assessment. Results of this
12 assessment indicate elevated levels of polynuclear aromatic hydrocarbons (PAHs) in the upland soil
13 and in , the river bank, the surface water, and sediment of the St. Joe River.

14 12. Following that assessment, the Respondents conducted a removal action at the Site with
15 EPA oversight. That response action included the excavation and removal of approximately 195 tons
16 of debris and contaminated soil along the St. Joe River. The area of excavation was about 85 feet
17 long, 10 feet wide and 9 feet deep, at the deepest part.

18 13. EPA conducted additional sampling in November 1999 to further characterize the extent of
19 contamination of the river sediments. The results of this sampling event indicated elevated levels of
20 PAHs in the St. Joe River, particularly along the river bank in front of the Site. Contamination was
21 also detected in samples collected from the river bottom as far as 500 feet downstream of the Site and
22 50 feet beyond the south shore of the St. Joe River.

23 14. Creosote is a flammable, heavy, oily liquid with a characteristic sharp, smoky smell. It is
24 often mixed with petroleum products, such as diesel. Creosote is classified by EPA as a hazardous
25 substance.

26 15. EPA has identified the following as potentially responsible parties at the Site:

- a. B.J. Carney & Company.
- b. Carney Products Company, Ltd.
- c. The City of St. Maries.

16. The St. Joe River is part of the Coeur d'Alene Lake basin, which supports the spawning of bull trout, which are listed pursuant to the Endangered Species Act as threatened. The bull trout migrates up the St. Joe River past the St. Maries Creosote site and finally into the St. Maries River. The Coeur d'Alene Tribe has promulgated tribal water quality standards for protection of recreational and cultural use, and aquatic life uses, including cutthroat trout, which are applicable to this reach of the river.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Act in Section V, EPA makes the following Conclusions of Law and Determinations, which Respondents neither admit nor deny.

17. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. The materials and constituents thereof at the Site identified in Paragraphs 10 - 14 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

19. The presence of hazardous substances at the Site or the past, present, or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

20. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

21. Respondents are responsible parties under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

22. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and

1 will expedite effective remedial action and minimize litigation. See 42 U.S.C. §§ 9604(a)(1) and
2 9622(a).

3 VII. NOTICE

4 23. EPA has provided notice of this action to the Coeur d'Alene Tribe, which is a signatory to
5 this Consent Order. EPA also has notified the State of Idaho that this Order is being issued and that
6 EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the
7 Order.

8 VIII. WORK TO BE PERFORMED

9 24. All work performed under this Consent Order shall be under the direction and supervision
10 of qualified personnel. Within thirty (30) days of the effective date of this Order, and before the work
11 outlined below begins, the Respondents shall notify EPA, in writing, of the names, titles, and
12 qualifications of the contractor ("Site Contractor") to be used in carrying out such work. Respondents
13 shall also notify EPA, in writing, of the names, titles and qualifications of any other personnel,
14 including contractors, consultants or laboratories retained to assist the Site Contractor in performance
15 of the work at least fifteen (15) days before any such individuals or entities commence work. The
16 qualifications of the persons undertaking the work for Respondents shall be subject to EPA's review,
17 for verification that such persons meet minimum technical background and experience requirements.
18 This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are
19 qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA
20 disapproves, in writing, of any person's technical qualifications, Respondents shall notify EPA of the
21 identity and qualifications of the replacement(s) within thirty (30) days of the written notice. If EPA
22 subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order and to
23 conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents.
24 During the course of the RI/FS, Respondents shall notify EPA, in writing, of any changes or additions
25 in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA
26 shall have the same right to approve changes and additions to personnel as it has hereunder regarding

1 the initial notification.

2 25. Respondents shall conduct activities and submit deliverables as provided by the attached
3 RI/FS Statement of Work, which is incorporated by reference into this Consent Order, for the
4 development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP,
5 and the following EPA guidance: the "Interim Final Guidance for Conducting Remedial Investigations
6 and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data
7 Usability in Risk Assessment" (OSWER Directive # 9285.7-05) and guidance referenced therein, and
8 guidance referenced in the Statement of Work, as may be amended or modified by EPA, and other EPA
9 guidance identified by EPA. The general activities that Respondents are required to perform are
10 described more fully in the Statement of Work incorporated by reference into this Consent Order, as
11 well as in the guidance documents referenced in the Statement of Work. The activities and
12 deliverables identified in the Statement of Work shall be developed as provisions in the Work Plan
13 and Sampling and Analysis Plan, and shall be submitted to EPA and the Tribe as provided. All work
14 performed under this Consent Order shall be in accordance with the schedules herein, and in full
15 accordance with the standards, specifications, and other requirements of the Work Plan and Sampling
16 and Analysis Plan, as initially approved or modified by EPA, in consultation with the Tribe, and as
17 may be amended or modified by EPA from time to time. For the purposes of this Order, the term
18 "day" means calendar day unless otherwise noted in the Order.

19 26. The list of deliverables and their corresponding schedule for completion/submission is
20 located at the end of the Statement of Work which is incorporated by reference into this Order.

21 27. EPA, in consultation with the Tribe, reserves the right to comment on, modify, and direct
22 changes for all deliverables. At EPA's discretion, Respondents must fully correct all deficiencies and
23 incorporate and integrate all information and comments supplied by EPA either in subsequent or
24 resubmitted deliverables. If EPA, in consultation with the Tribe, disapproves of, or requires revisions
25 in whole or in part, to any deliverable or submittal identified in the Statement of Work as a "major
26 deliverable" or "major submittal" from the Respondents, the Respondents shall amend and submit to

1 EPA a revised submittal or deliverable which is responsive to the directions in all EPA comments
2 within thirty (30) days of receiving EPA's comments. If EPA, in consultation with the Tribe,
3 disapproves of, or requires revisions in whole or in part, to any other deliverable or submittal which
4 is not a "major" deliverable or submittal, Respondents shall amend and submit to EPA and the Tribe a
5 revised submittal or deliverable which is responsive to the directions in all EPA comments within
6 twenty (20) days of receiving EPA's comments. Following approval or modification by EPA, all
7 deliverables or submittals shall become incorporated by reference into the Statement of Work and
8 shall be enforceable by EPA through this Consent Order.

9 28. Respondents shall not initiate work under the Project Management Plan, RI/FS Work
10 Plan, the Sampling and Analysis Plan, the Data Management Plan, and the Quality Assurance Project
11 Plan until EPA has provided Respondents with written approval of those deliverables. In addition,
12 Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA's
13 written approval of the Draft RI Report, Draft Risk Assessment, and the Draft FS Report. While
14 awaiting EPA approval on the deliverables identified in this paragraph, Respondents shall proceed
15 with all other tasks and activities which may be conducted independently of these deliverables, in
16 accordance with the schedule set forth in this Consent Order.

17 29. Upon receipt of the Draft FS Report, EPA will evaluate, as necessary, the estimates of the
18 risk to the public and environment that are expected to remain after a particular remedial alternative
19 has been completed.

20 30. EPA reserves the right to stop Respondents from proceeding further, either temporarily or
21 permanently, on any task, activity, or deliverable at any point during the RI/FS. If EPA requires that
22 Respondents stop work, deadlines affected by the work stoppage will be adjusted appropriately unless
23 the Respondents are at fault for the conditions leading to the work stoppage.

24 31. In the event that Respondents amend or revise a report, plan, or other submittal upon
25 receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent
26 submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or

1 statutory penalties, perform its own studies, complete the RI/FS (or any portion of the RI/FS) under
2 CERCLA and the NCP, and seek reimbursement from the Respondents for its costs, and/or seek any
3 other appropriate relief.

4 32. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS,
5 Respondents shall incorporate and integrate information supplied by EPA into the Final RI/FS Report.

6 33. Neither failure of EPA to expressly approve or disapprove of Respondents's submissions
7 within a specified time period(s), nor the absence of comments, shall be construed as approval by
8 EPA.

9 34. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to
10 an out-of-state waste management facility, provide written notification to the appropriate state
11 environmental official in the receiving state and to EPA's Designated Remedial Project Manager of
12 such shipment of hazardous substances. However, the notification of shipments shall not apply to any
13 such off-Site shipments when the total volume of such shipments will not exceed ten (10) cubic yards.

14 a. The notification shall be in writing, and shall include the following information,
15 where available: (1) the name and location of the facility to which the hazardous substances are to be
16 shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule
17 for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall
18 notify the receiving state of major changes in the shipment plan, such as a decision to ship the
19 hazardous substances to another facility within the same state, or to a facility in another state.

20 b. The identity of the receiving facility and state will be determined by Respondents
21 following the award of the contract for the RI/FS. Respondents shall provide all relevant information,
22 including information under the categories noted in Paragraph 36(a) above, on the off-Site shipments,
23 as soon as practical after the award of the contract and before the hazardous substances are actually
24 shipped.

25 IX. BASELINE RISK ASSESSMENT

26 35. Respondents shall perform a Baseline Risk Assessment as part of conducting the RI/FS for

1 the Site. The major components of the Baseline Risk Assessment include contaminant identification,
2 exposure assessment, toxicity assessment, and human health and ecological risk characterization.
3 Respondents shall prepare a Baseline Risk Assessment Report based on the data collected by the
4 Respondents during the Site characterization, and other data as appropriate. EPA reserves the right to
5 comment on, modify, and direct changes for the Baseline Risk Assessment Report. Respondents must
6 fully correct all deficiencies and incorporate and integrate all information and comments supplied by
7 EPA, in consultation with the Tribe, either in subsequent or resubmitted deliverables. If EPA
8 subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect
9 EPA's directions for changes, EPA reserves the right to complete the Baseline Risk Assessment itself
10 at any point, assess stipulated penalties, and to seek reimbursement from Respondents for costs
11 incurred in completing the Baseline Risk Assessment.

12 X. MODIFICATION OF THE WORK PLAN

13 36. If at any time during the RI/FS process, Respondents identify a need for additional data, a
14 memorandum documenting the need for additional data shall be submitted to the EPA Remedial
15 Project Manager within five (5) working days of identification. EPA, in consultation with the Tribe,
16 will determine whether the additional data will be collected by Respondents and, if data is to be
17 collected, the schedule and mechanism for incorporating it into reports and deliverables.

18 37. In the event of conditions posing an immediate threat to human health or welfare or the
19 environment, Respondents shall notify EPA and the Tribe immediately. In the event of unanticipated
20 or changed circumstances at the Site, Respondents shall notify the EPA Remedial Project Manager by
21 telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances.
22 In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or
23 the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or
24 amend the Work Plan, in writing, accordingly. Respondents shall perform the Work Plan as modified
25 or amended.

26 38. EPA may determine that in addition to tasks defined in the initially approved Work Plan,

1 other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the
2 Statement of Work for this RI/FS. EPA may require that the Respondents perform these response
3 actions in addition to those required by the initially approved Work Plan, including any approved
4 modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents
5 shall state their willingness to perform the additional work, in writing, to EPA within fourteen (14)
6 days of receipt of the EPA request or Respondents shall invoke dispute resolution. Subject to
7 resolution of any dispute pursuant to Section XVIII, Respondents shall implement the additional tasks
8 which EPA determines are necessary. The additional work shall be completed according to the
9 standards, specifications, and schedule set forth or approved by EPA in a written modification to the
10 Work Plan or written Work Plan Supplement. EPA reserves the right to conduct the work itself at any
11 point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

12 XI. QUALITY ASSURANCE

13 39. Respondents shall assure that work performed, samples taken, and analyses conducted
14 conform to the requirements of the Statement of Work, the QAPP and guidance identified therein.
15 Respondents will assure that field personnel used by Respondents are properly trained in the use of
16 field equipment and in chain-of-custody procedures.

17 XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, 18 RECORD OF DECISION, AND ADMINISTRATIVE RECORD

19 40. EPA retains the responsibility for the release to the public of the RI/FS Report. EPA
20 retains responsibility for the preparation and release to the public of the Proposed Plan and the Record
21 of Decision in accordance with CERCLA and the NCP.

22 41. EPA shall provide Respondents with the final RI/FS Report, Proposed Plan, and Record
23 of Decision.

24 42. EPA will prepare an administrative record file for selection of the response action
25 pursuant to the NCP at 40 C.F.R. Part 300, Subpart I. Respondents must submit to EPA documents
26 developed during the course of the RI/FS upon which selection of the response action may be based.

1 Respondents shall provide copies of plans, task memoranda, including documentation of field
2 modifications, recommendations for further action, quality assurance memoranda and audits, raw data,
3 field notes, laboratory analytical reports, and other reports. Respondents must additionally submit any
4 previous studies conducted under state, local, or other federal authorities relating to selection of the
5 response action, and all communications between Respondents and state, local, or other federal
6 authorities concerning selection of the response action. EPA has established a community information
7 repository at the St. Maries Public Library to house one copy of the administrative record.

8 XIII. PROGRESS REPORTS AND MEETINGS

9 43. Respondents shall make presentations at, and participate in, meetings at the request of
10 EPA, in consultation with the Tribe, during the initiation, conduct, and completion of the RI/FS. In
11 addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems
12 or new issues. Meetings will be scheduled at EPA's discretion or upon request of the Tribe.

13 44. In addition to the deliverables set forth in this Order, Respondents shall provide to EPA
14 and the Tribe monthly progress reports by the tenth (10th) day of the following month starting the first
15 full month after the effective date of this Consent Order. Progress reports may be submitted by e-mail
16 by the tenth (10th) day of the month and a paper copy mailed on that date. At a minimum, with respect
17 to the preceding month, these progress reports shall: (1) describe the actions which have been taken to
18 comply with this Consent Order during that month; (2) include all results of sampling and tests and all
19 other data received by the Respondents; (3) describe work planned for the next two (2) months with
20 schedules relating such work to the overall project schedule for RI/FS completion; and (4) describe
21 all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions
22 developed and implemented to address any actual or anticipated problems or delays.

23 XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

24 45. All results of sampling, tests, modeling, or other data (including raw data) generated by
25 Respondents, or on Respondents' behalf, during implementation of this Consent Order, shall be
26 submitted to EPA and the Tribe in the subsequent Monthly Progress Report as described in Section

1 XIII of this Order. EPA will likewise make available to the Respondents data generated by EPA
2 unless it is exempt from disclosure by any federal or state law or regulation.

3 46. Respondents will verbally notify EPA and the Tribe at least seven (7) days prior to
4 conducting significant field events as described in the Statement of Work, Work Plan, or Sampling and
5 Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant,
6 Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized
7 representatives) of any samples collected by the Respondents in implementing this Consent Order.

8 47. Upon reasonable notice to Respondents, EPA and its authorized representatives, and the
9 Tribe, shall have the authority to enter and freely move about all property at the Site and off-Site areas
10 where work, if any, is being performed, for the purposes of inspecting conditions, activities, the
11 results of activities, records, operating logs, and contracts related to the Site or Respondents and its
12 contractor pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms
13 of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using
14 a camera, sound recording device, or other documentary type equipment; and verifying the data
15 submitted to EPA by the Respondents. Such entry shall take place during normal business hours,
16 unless entry at other times is required by an emergency. The Respondents shall allow these persons to
17 inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other
18 writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be
19 interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All
20 parties with access to the Site under this paragraph shall comply with all approved Health and Safety
21 Plans.

22 48. The Respondents may assert a claim of business confidentiality covering part or all of the
23 information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. § 2.203,
24 provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This
25 claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b), and substantiated at the time
26 the claim is made. Information determined to be confidential by EPA will be given the protection

1 specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to
2 EPA, it may be made available to the public by EPA or the state without further notice to the
3 Respondents. Respondents agree not to assert confidentiality claims with respect to any data related
4 to Site conditions, sampling, or monitoring.

5 49. In entering into this Order, Respondents waive any objections to the admissibility of any
6 data gathered, generated, or evaluated by EPA, the Tribe or Respondents in the performance or
7 oversight of the work that has been verified according to the quality assurance/quality control
8 (QA/QC) procedures required by the Consent Order or any EPA-approved Work Plans or Sampling
9 and Analysis Plans. If Respondents object to any data relating to the RI/FS, Respondents shall submit
10 to EPA a report that identifies and explains their objections, describes the acceptable uses of the data,
11 if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within
12 fourteen (14) days of Respondents' receipt of any document containing such data.

13 50. If the Site, or the off-Site area that is to be used for access or is within the scope of the
14 RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order,
15 Respondents will obtain, or use their best efforts to obtain, Site access agreements from the present
16 owner(s) within thirty (30) days from the date EPA directs Respondents to obtain such access
17 agreements. Such agreements shall provide access for EPA, its contractors and oversight officials, the
18 Tribe and its contractors, the state and its contractors, and the Respondents or their authorized
19 representatives, and such agreements shall specify that Respondents are not EPA's representative with
20 respect to liability associated with Site activities. Copies of such agreements shall be provided to
21 EPA prior to Respondents' initiation of field activities. Respondents' best efforts ~~shall~~ may include
22 providing reasonable compensation to any off-Site property owner. If access agreements are not
23 obtained within the time referenced above, Respondents shall immediately notify EPA of their failure
24 to obtain access. EPA may obtain access for the Respondents, perform those tasks or activities with
25 EPA contractors, or terminate the Consent Order in the event that Respondents cannot obtain access
26 agreements. In the event that EPA performs those tasks or activities with EPA contractors and does

1 not terminate the Consent Order, Respondents shall perform all other activities not requiring access to
2 that Site, and shall reimburse EPA for all costs incurred in performing such activities. Respondents
3 additionally shall integrate, at EPA's direction, the results of any such tasks undertaken by EPA into
4 their reports and deliverables. Furthermore, the Respondents agree to indemnify the U.S. Government
5 as specified in Section XXV of this Order. Respondents also shall reimburse EPA for all costs and
6 attorney fees incurred by the United States to obtain access for the Respondents pursuant to Section
7 XXI of this Order.

8 **XV. DESIGNATED PROJECT COORDINATORS**

9 51. Documents including reports, approvals, disapprovals, and other correspondence which
10 must be submitted under this Consent Order, may be submitted by e-mail on or before the applicable
11 deadline, with a copy sent by first class mail, except that copies of major deliverables identified in
12 paragraph 65 shall be sent by certified mail, return receipt requested, to the following addressees or to
13 any other addressees which the Respondents and EPA designate in writing:

14 (a) Documents to be submitted to EPA (four copies) should be sent to:

15 Hanh Gold
16 EPA Remedial Project Manager
17 Office of Environmental Cleanup
18 Mail Stop ECL-111
19 U.S. Environmental Protection Agency, Region 10
20 1200 Sixth Avenue
21 Seattle, Washington 98101

19 Documents directed to the Tribe should be sent to:

20 Phil Cernera
21 424 Sherman Avenue, Suite 301
22 Coeur d'Alene, Idaho 83814

22 Documents directed to the State should be sent to:

23 John Sutherland
24 Idaho Dept. of Environmental Quality
25 2110 Ironwood Parkway
26 Coeur d'Alene, Idaho 83814

26 (b) Documents to be submitted to the Respondents should be sent to:

1 Carney Products Co., Ltd.
2 c/o James B. Comerford
3 Carney Products Co., Ltd.
4 Suite 306
5 222 North Wall Street
6 Spokane, WA 99201

Bradley M. Marten
Marten Brown Inc.
Suite 2200
1191 Second Avenue
Seattle, WA 99101

City of St. Maries
c/o Mayor Ernest Pendell
City Hall
602 College Avenue
St. Maries, ID 83861

Nancy Wolff
Morris & Wolff P.A.
722 Main Avenue
St. Maries, ID 83861

8 52. Within ten (10) days of the effective date of this Consent Order, EPA, the Tribe, and the
9 Respondents shall each designate their own Project Coordinator and provide notice to each other of
10 his or her name, address, phone number and e-mail address. Each Project Coordinator shall be
11 responsible for overseeing the implementation of this Consent Order. To the maximum extent
12 possible, communications between the Respondents and EPA and the Tribe shall be directed to the
13 Project Coordinators by mail or e-mail, with copies to such other persons as EPA, the Tribe, and
14 Respondents may respectively designate. Communications include, but are not limited to, all
15 documents, reports, approvals, and other correspondence submitted under this Consent Order.

16 53. EPA, the Tribe, and the Respondents each have the right to change their respective Project
17 Coordinator. The other party must be notified, in writing, at least ten (10) days prior to the change.

18 54. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project
19 Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project
20 Coordinator shall have the authority consistent with the NCP, to halt any work required by this
21 Consent Order, and to take any necessary response action when he or she determines that conditions at
22 the Site may present an immediate endangerment to public health or welfare or the environment. The
23 absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall
24 not be cause for the stoppage or delay of work.

25 55. EPA shall arrange for a qualified person to assist in its oversight and review of the
26 conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight

1 assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify
2 the Work Plan.

3 XVI. OTHER APPLICABLE LAWS

4 56. Respondents shall comply with all laws that are applicable when performing the RI/FS.
5 No local, tribal, state, or federal permit shall be required for any portion of any action conducted
6 entirely on-Site, including studies, where such action is selected and carried out in compliance with
7 Section 121 of CERCLA, 42 U.S.C. § 9621.

8 XVII. RECORD PRESERVATION

9 57. All records and documents in EPA's and Respondents' possession that relate in any way to
10 the Site shall be preserved during the conduct of this Consent Order and for a minimum of ten (10)
11 years after commencement of construction of any remedial action. The Respondents shall acquire and
12 retain copies of all documents that relate to the Site and are in the possession of its employees, agents,
13 accountants, contractors, or attorneys. After this 10-year period, the Respondents shall notify EPA at
14 least ninety (90) days before the documents are scheduled to be destroyed. If EPA requests that the
15 documents be saved, the Respondents shall, at no cost to EPA, give EPA the documents or copies of
16 the documents.

17 XVIII. DISPUTE RESOLUTION

18 58. Any disputes concerning activities or deliverables required under this Consent Order shall
19 be resolved as follows: If the Respondents object to any EPA notice of disapproval or requirement
20 made pursuant to this Consent Order, Respondents shall notify EPA's Remedial Project Manager, in
21 writing, of their objections within fourteen (14) days of receipt of the disapproval notice or
22 requirement. Respondents' written objections shall define the dispute, state the basis of Respondents'
23 objections, and be sent certified mail, return receipt requested. EPA, in consultation with the Tribe,
24 and the Respondents then have an additional fourteen (14) days to reach agreement. If an agreement is
25 not reached within fourteen (14) days, Respondents may submit the dispute to EPA Region 10's
26 Director of the Office of Environmental Cleanup within ten (10) additional days. The Office Director

1 shall make a decision concerning the dispute within thirty (30) days from the date of Respondents'
2 submission of the dispute; stipulated penalties shall not continue to accrue more than thirty (30) days
3 after the dispute is submitted. The Office Director's determination is EPA's final decision.
4 Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute,
5 regardless of whether Respondents agree with the decision. If the Respondents do not agree to
6 perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves
7 the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents,
8 to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate
9 relief.

10 59. Respondents are not relieved of their obligations to perform and conduct activities and
11 submit deliverables on the schedule set forth in the Work Plan, while a matter is pending in dispute
12 resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.

13 60. The Baseline Risk Assessment, if prepared by EPA, is not subject to dispute resolution
14 under this Consent Order.

15 XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

16 61. For each day that the Respondents fail to complete a deliverable in a timely manner or fail
17 to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the
18 requirements of this Order, Respondents shall be liable for stipulated penalties. If Respondents do not
19 submit a document or deliverable by the required date, penalties begin to accrue on the day that
20 performance is due or a violation occurs, and extend through the period of correction. Where a
21 revised submission by Respondents is required, stipulated penalties shall continue to accrue until a
22 satisfactory deliverable is produced. Before stipulated penalties are assessed on initial draft
23 submission, Respondents will have an opportunity to correct initial draft submissions that EPA
24 considers of unacceptable quality for those draft submissions that otherwise are fully responsive to
25 EPA's previous directions on related issues, technical memoranda, or deliverables. EPA will
26 provide written notice for violations that are not based on timeliness and penalties shall accrue from

1 the date of Respondents' receipt of such notice. Payment shall be due within thirty (30) days of
2 receipt of a demand letter from EPA.

3 62. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the
4 end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. §
5 3717. Respondents shall further pay a handling charge of one percent (1%), to be assessed at the end
6 of each thirty-one (31) day period, and a six percent (6%) per annum penalty charge, to be assessed if
7 the penalty is not paid in full within ninety (90) days after it is due.

8 63. Respondents shall make all payments by forwarding a check to:

9 U.S. Environmental Protection Agency
10 Superfund Accounting
11 P.O. Box 360903M
12 Pittsburgh, Pennsylvania 15251

13 Checks should identify the name of the Site, the Site identification number 108Q, the account
14 number, and the title of this Order. A copy of the check and/or transmittal letter shall be forwarded to
15 the EPA Remedial Project Manager.

16 64. For the following major deliverables, stipulated penalties shall accrue in the amount of
17 \$500.00 per day, per violation, for the first seven days of noncompliance; \$1,000.00 per day, per
18 violation, for the 8th through 14th day of noncompliance; \$2,500.00 per day, per violation, for the 15th
19 day through the 30th day; and \$5,000.00 per day per violation for all violations lasting beyond thirty
20 (30) days.

- 21 1) An original and any revised Project Management Plan.
- 22 2) An original and any revised RI/FS Work Plan.
- 23 3) An original and any revised Sampling and Analysis Plan.
- 24 4) An original and any revised Health and Safety Plan.
- 25 5) An original and any revised RI Report.
- 26 6) An original and any revised Baseline Human Health and Ecological Risk Assessment.

1 7) An original and any revised FS Report.

2
3 65. For the following interim deliverables, stipulated penalties shall accrue in the amount of
4 \$100.00 per day, per violation, for the first week of noncompliance; \$200.00 per day, per violation,
5 for the 8th through 14th day of noncompliance; \$500.00 per day, per violation, for the 15th day through
6 the 30th day of noncompliance; and \$1,000.00 per day per violation for all violations lasting beyond
7 thirty (30) days.

8 1) Data Management Plan

9 2) An original and any revised Summary of Data Gaps Report.

10 3) Technical Memorandum: Modeling of Site Characteristics (if modeling is determined
11 to be appropriate).

12 4) Site Conceptual Model (submit together with the Draft RI Report).

13 5) Preliminary Site Characterization Summary Report (any revision will be submitted as
14 part of the Draft RI Report).

15 6) Technical Memorandum: Treatability Testing Candidate Technologies.

16 7) An original and any revised Treatability Testing Work Plan.

17 8) An original and any revised Treatability Study Sampling and Analysis Plan.

18 9) Treatability Testing Health and Safety Plan.

19 10) Draft and Final Treatability Testing Evaluation Report.

20 11) Draft Technical Memorandum: Revised RAOs (any revision will be submitted as part
21 of the Draft FS Report).

22 12) Draft Technical Memorandum: Remedial Technologies, Alternatives, and Screening
23 (any revision will be submitted as part of the Draft FS Report).

24 13) Technical Memorandum: Summary of Comparative Analysis of the Alternatives.

25 66. For the Monthly Progress Reports, stipulated penalties shall accrue in the amount of
26 \$100.00 per day, per violation, for the first week of noncompliance; \$200.00 per day, per violation,
27 for the 8th through 14th day of noncompliance; \$300.00 per day, per violation, for the 15th day through
28 the 30th day; and \$500.00 per day, per violation, for all violations lasting beyond thirty (30) days.

1 available, Respondents shall notify the Unit Manager for the Remedial Project Manager in the EPA
2 Region 10 Office of Environmental Cleanup, within forty-eight (48) hours of when the Respondents
3 knew or should have known that the event might cause a delay. Within five (5) business days
4 thereafter, Respondents shall provide EPA and the Tribe, in writing, the reasons for the delay, the
5 anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a
6 schedule for implementation of any measures to be taken to mitigate the effect of the delay, and a
7 statement as to whether, in the opinion of Respondents, such event may cause or contribute to an
8 endangerment to public health, welfare, or the environment. Respondents shall exercise best efforts to
9 avoid or minimize any delay and any effects of a delay. Failure to comply with the above
10 requirements shall preclude Respondents from asserting any claim of Force Majeure.

11 71. If EPA, in consultation with the Tribe, agrees that the delay or anticipated delay is
12 attributable to Force Majeure, the time for performance of the obligations under this Consent Order
13 that are directly affected by the Force Majeure event shall be extended by agreement of the parties,
14 pursuant to Section XXVI of this Consent Order, for a period of time not to exceed the actual duration
15 of the delay caused by the Force Majeure event. An extension of the time for performance of the
16 obligation(s) directly affected by the Force Majeure event shall not, of itself, extend the time for
17 performance of any subsequent obligation.

18 72. If EPA does not agree that the delay or anticipated delay has been or will be caused by a
19 Force Majeure event, or does not agree with Respondents on the length of the extension, the issue shall
20 be subject to the dispute resolution procedures set forth in Section XVIII of this Consent Order. In any
21 such proceeding, to qualify for a Force Majeure defense, Respondents shall have the burden of
22 demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will
23 be caused by a Force Majeure event, that the duration of the delay was or will be warranted under the
24 circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts
25 to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of
26 Paragraph 73.

1 73. Should Respondents carry the burden set forth in Paragraph 75, the delay at issue shall be
2 deemed not to be a violation of the affected obligation of this Consent Order.

3 **XXI. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS**

4 74. Reimbursement of EPA Costs. Respondents shall reimburse EPA for EPA response costs
5 incurred by the United States at the site.

6 a. EPA Past Costs. Within 90 days after the effective date of the Order, Respondents
7 shall pay \$503,393.19 to the “St. Maries Creosote Site” Special Account within the EPA Hazardous
8 Substance Superfund, to be retained and used to conduct or finance cleanup actions at or in connection
9 with the Site, in accordance with EPA guidance, including “Placement of Proceeds from CERCLA
10 Settlements in Special Accounts,” dated January 27, 2000, and “Interim Guidance on Disbursement of
11 Funds from EPA Special Accounts to CERCLA Potentially Responsible Parties,” dated November 3,
12 1998. Any balance remaining in the “St. Maries Creosote Site” Special Account shall be transferred
13 by EPA to the EPA Hazardous Substance Superfund after completion of Site response actions. EPA
14 Past response costs are all costs not inconsistent with the NCP, including, but not limited to, direct
15 and indirect costs and interest, that the United States, its employees, agents, contractors, consultants,
16 and other authorized representatives paid with regard to the Site prior to April 4, 2001. Payment shall
17 be made by Electronic Funds Transfer (EFT) in accordance with current EFT procedures to be
18 provided to Respondents by EPA Region 10, and shall be accompanied by a statement identifying the
19 name and address of the Respondents, the Site name, and the EPA site identification number 108Q.

20 b. EPA Future Response and Oversight Costs. Respondents shall reimburse EPA for
21 all EPA RI/FS oversight costs not inconsistent with the NCP incurred by the United States with respect
22 to this RI/FS. EPA RI/FS oversight costs may include, but are not limited to, costs incurred by the
23 U.S. Government in overseeing Respondents’ implementation of the requirements of this Consent
24 Order and activities performed by the government as part of the RI/FS and community relations,
25 including any costs incurred while obtaining access. Costs shall include all direct and indirect costs,
26 including, but not limited to, time and travel costs of EPA personnel and associated indirect costs,

1 contractor costs, cooperative agreement costs, compliance monitoring, including the collection and
2 analysis of split samples, inspection of RI/FS activities, enforcement activities related to this Consent
3 Order, Site visits, discussions regarding disputes that may arise as a result of this consent Order,
4 review and approval of reports, costs of performing the Baseline Risk Assessment (if performed by
5 EPA), and costs of redoing any of Respondents' tasks.

6 c. On a periodic basis, EPA shall submit to Respondents a bill for EPA RI/FS
7 oversight costs. Any necessary summaries, including, but not limited to, EPA's Superfund Cost
8 Recovery Package Imaging and On-line System (SCORPIOS), or such other summary as certified by
9 EPA, shall serve as basis for payment demands. Respondents shall, within sixty (60) days of receipt
10 of the bill, make payment electronically or remit a cashier's or certified check for the amount of the
11 bill made payable to the "St. Maries Creosote Site" Special Account within the "Hazardous Substance
12 Superfund", at the following address:

13 Payee: Mellon Bank
14 EPA Region 10
15 Attn: Superfund Accounting
16 P.O. Box 360906M
17 Pittsburgh, PA 15251

18 Respondents shall simultaneously transmit a copy of the check to Hanh Gold, Remedial Project
19 Manager, and to Rich McAllister, Assistant Regional Counsel, EPA, 1200 Sixth Avenue, Seattle,
20 Washington. Payments shall be designated as "Response Costs - St. Maries Creosote Site" and shall
21 reference the payor's name and address, the EPA site identification number 108Q, and the docket
22 number of this Consent Order.

23 d. In the event that the payment for EPA's past response costs is not made within ninety
24 (90) days after the effective date of this Consent Order, or the payments for RI/FS oversight costs are
25 not made within sixty days of the Respondents' receipt of the bill, Respondents shall pay interest on the
26 unpaid balance.

27 e. If Respondents fail to remit payment to EPA within the timeframes specified above,
28 interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The

1 interest to be paid on past response costs and future response costs shall accrue from the date of
2 receipt of the bill for those costs. Interest shall accrue at the rate specified through the date of the
3 payment notwithstanding any dispute or objection to a portion of the costs. Payments of interest made
4 under this paragraph shall be in addition to such other remedies or sanctions available to the United
5 States by virtue of Respondent's failure to make timely payments under this section.

6 f. Respondents may dispute all or part of a bill for future response costs submitted
7 under this Consent Order, if Respondents allege that EPA has made an accounting error, or if
8 Respondents allege that a cost item is inconsistent with the NCP.

9 g. If any dispute over costs is resolved before payment is due, the amount due will be
10 adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the
11 full amount of the uncontested costs into the St. Maries Creosote Site Special Account as specified
12 above on or before the due date. Within the same time period, Respondents shall pay the full amount
13 of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously
14 transmit a copy of both checks to the RPM and to Rich McAllister, Assistant Regional Counsel, EPA,
15 Region 10. Respondents shall ensure that the prevailing party or parties in the dispute shall receive
16 the amount upon which they prevailed from the escrow funds plus interest within ten days after the
17 dispute is resolved.

18 75. Reimbursement of Coeur d'Alene Tribe Response Costs.

19 a. Coeur d'Alene Tribe Past Response Costs. Respondents shall pay the Tribe's Past
20 Response Costs, in the manner detailed in this paragraph, within thirty (30) days of receipt of the bill.
21 Past response costs are all costs not inconsistent with the NCP, including, but not limited to, direct
22 and indirect costs and interest, that the Tribe, its employees, agents, contractors, consultants, and other
23 authorized representatives paid with regard to the Site prior to the effective date of this Consent
24 Order.

25 b. Coeur d'Alene Tribe Future Response Costs. Respondents shall reimburse the Tribe for
26 oversight costs incurred by the Tribe at the site after the effective date of this Consent Order with

1 respect to the RI/FS. The Tribe's RI/FS oversight Costs are all costs, including, but not limited to,
2 direct and indirect costs, that the Tribe incurs in reviewing or developing plans, reports, and other
3 items pursuant to this Consent Order, verifying the Work, or otherwise implementing, overseeing, or
4 enforcing this Consent Order.

5 c. On a monthly basis, the Tribe shall submit to Respondents a bill for RI/FS oversight costs
6 that includes a certified cost summary, which includes direct and indirect costs incurred by the Tribe
7 and its contractors. Unless covered by the advance payments provided above, Respondents shall,
8 within sixty (60) days of receipt of the bill, remit a cashier's or certified check for the amount of the
9 bill made payable to the Tribe at the following address:

10 Phil Cernera
11 424 Sherman Avenue, Suite 301
12 Coeur d'Alene, Idaho 83814

13 Payments shall be designated as "RI/FS Oversight Costs - St. Maries Creosote Site" and shall
14 reference the payor's name and address, the EPA site identification number 108Q, attention Phil
15 Cernera, and the docket number of this Order.

16 d. If Respondents fail to remit payment to the Tribe within sixty (60) days as specified above,
17 interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The
18 interest to be paid on RI/FS oversight costs shall accrue from the date of receipt of the bill for those
19 costs. Interest shall accrue at the rate specified through the date of the payment . Payments of interest
20 made under this paragraph shall be in addition to such other remedies or sanctions available to the
21 Tribe by virtue of Respondents' failure to make timely payments under this section.

22 e. Respondents may dispute all or part of a bill for future response costs submitted under this
23 Consent Order, if Respondents allege that the Tribe has made an accounting error, or if Respondents
24 allege that a cost item is inconsistent with the NCP.

25 f. If any dispute over costs is resolved before payment is due, the amount due will be adjusted
26 as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full
27 amount of the uncontested costs as specified above on or before the due date. Within the same time

1 period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow
2 account. Respondents shall simultaneously transmit a copy of both checks to the Tribe's Project
3 Manager. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the
4 amount upon which they prevailed from the escrow funds plus interest within ten days after the dispute
5 is resolved

6 XXII. RESERVATIONS OF RIGHTS

7 76. EPA reserves the right to bring an action against the Respondents under Section 107 of
8 CERCLA, 42 U.S.C. § 9607, for recovery of all response costs not reimbursed by the Respondents.

9 77. EPA reserves the right to bring an action against Respondents to enforce the response and
10 oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties
11 assessed pursuant to Section XIX of this Consent Order, and to seek penalties pursuant to Section 109
12 of CERCLA, 42 U.S.C. § 9609.

13 78. Except as specifically provided in this Consent Order, the Tribe reserves the right to take,
14 direct, or order all actions necessary to protect public health, welfare, or the environment or to
15 prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or
16 contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall
17 prevent the Tribe from seeking legal or equitable relief to enforce the terms of this Consent Order,
18 from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the
19 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable
20 law. The Tribe reserves the right to bring an action against Respondents under Section 107 of
21 CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the Tribe related to this
22 Consent Order or the Site and not reimbursed by Respondents, and for natural resources liability.

23 79. Respondent City of St. Maries reserves all rights and defenses, without limitation, as to
24 the joint and several liability of the City under this Consent Order.

25 80. Except as expressly provided in this Consent Order, each party reserves all rights and
26 defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or EPA's

1 response or enforcement authorities including, but not limited to, the right to seek injunctive relief,
2 stipulated penalties, statutory penalties, and/or punitive damages.

3 81. Following satisfaction of the requirements of this Consent Order, Respondents shall have
4 resolved its liability to EPA for the work performed by Respondents pursuant to this Consent Order.
5 Respondents is not released from liability, if any, for any response actions taken beyond the scope of
6 this Order regarding site assessment work, removals, other operable units, remedial design/remedial
7 action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C.
8 § 9621(c).

9 XXIII. COVENANT NOT TO SUE

10 82. Except as otherwise specifically provided in this Consent Order, in consideration and
11 upon Respondents' payment of the response costs specified in Section XXI of this Consent Order, EPA
12 and the Tribe covenant not to sue or to take administrative action against Respondents under Section
13 107(a) of CERCLA, 42 U.S.C. § 9607(a), for “matters addressed” as defined in section XXIV of this
14 Consent Order, including recovery of past and RI/FS oversight costs incurred by the United States or
15 the Tribe in connection with this Consent Order. This covenant not to sue shall take effect upon the
16 receipt by EPA and the Tribe of the payments required by Section XXI - Reimbursement of Response
17 and Oversight Costs.

18 83. This covenant not to sue is conditioned upon the complete and satisfactory performance by
19 Respondents of their obligations under this Consent Order. This covenant not to sue extends to
20 obligations under this Consent Order. This covenant not to sue extends only to the Respondents and
21 does not extend to any other person.

22 XXIV. CONTRIBUTION PROTECTION

23 84. As of the Effective Date of this Consent Order, Respondents are entitled to protection from
24 contribution claims or actions to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA,
25 42 U.S.C. § 9613(f)(2) and § 9622(h)(4), for “matters addressed” in this Consent Order. The “matters
26 addressed” in this Consent Order are EPA’s past response costs and RI/FS oversight costs, and the

1 Tribe's past response costs and RI/FS oversight costs. Nothing in this Consent Order precludes the
2 United States, the Tribe or Respondents from asserting any claims, causes of action or demands
3 against any persons not parties to this Consent Order, including claims for indemnification,
4 contribution or cost recovery.

5 **XXV. DISCLAIMER**

6 85. By signing this Consent Order and taking actions under this Consent Order, Respondents do
7 not admit EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the
8 Respondents in this Consent Order shall not be considered an admission of liability and is not
9 admissible in evidence against the Respondents in any judicial or administrative proceeding other than
10 a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating
11 to it. Respondents retain their rights to assert claims against other potentially responsible parties at the
12 Site. However, the Respondents agree not to contest the validity or terms of this Order, or the
13 procedures underlying or relating to it in any action brought by the United States, including EPA, to
14 enforce its terms.

15
16 **XXVI. OTHER CLAIMS**

17 86. In entering into this Consent Order, Respondents waive any right to seek reimbursement
18 under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b) relating to costs reimbursed and the work
19 performed pursuant to this Consent Order. Respondents also waive any right to present a claim under
20 Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612 relating to costs reimbursed and the work
21 performed pursuant to this Consent Order. This Consent Order does not constitute any decision on
22 preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondents
23 further waive all other statutory and common law claims against EPA, including, but not limited to,
24 contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

25 87. Nothing in this Consent Order shall constitute or be construed as a release from any claim,
26 cause of action, or demand in law or equity against any person, firm, partnership, subsidiary, or

1 corporation not a signatory to this Consent Order for any liability it may have arising out of, or relating
2 in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any
3 hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

4 88. Respondents shall bear their own costs and attorneys fees.

5 **XXVII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

6 89. Respondents shall establish and maintain a financial instrument or trust account or other
7 financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other
8 obligations required under this Consent Order, including a ten (10) percent margin for cost overruns.
9 Within thirty (30) days after the effective date of this Consent Order, Respondents shall fund the
10 financial instrument or trust account sufficiently to perform the work required under this Consent Order
11 projected for the period beginning with the effective date of the Consent Order through the succeeding
12 calendar year quarter. Beginning on the effective date of this Consent Order, and on or before the 15th
13 calendar day of each calendar year quarter thereafter, Respondents shall fund the financial instrument
14 or trust account sufficiently to perform the work and other activities required under this Consent Order
15 projected for the succeeding calendar year quarter.

16 90. If at any time the net worth of the financial instrument or trust account is insufficient to
17 perform the work and other obligations under the Consent Order for the upcoming quarter,
18 Respondents shall provide written notice to EPA within seven (7) days after the net worth of the
19 financial instrument or trust account becomes insufficient. The written notice shall describe why the
20 financial instrument or trust account is funded insufficiently and explain what actions have been or will
21 be taken to fund the financial instrument or trust account adequately.

22 91. (a) Prior to commencement of any work under this Consent Order, Respondents shall
23 secure, and shall maintain in force for the duration of this Consent Order, and for two (2) years after
24 the completion of all activities required by this Consent Order, Comprehensive General Liability
25 ("CGL") and automobile insurance, with limits of \$10 million dollars, combined single limit, naming
26 as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the

1 amount of \$ 5,000,000.00 per occurrence, and Umbrella Liability Insurance in the amount of
2 \$ 2,000,000.00 per occurrence.

3 (b) Respondents shall also secure, and maintain in force for the duration of this
4 Consent Order and for two (2) years after the completion of all activities required by this Consent
5 Order the following:

- 6 i. Professional Errors and Omissions Insurance in the amount of \$ 1,000,000.00
7 per occurrence.
- 8 ii. Pollution Liability Insurance in the amount of \$ 1,000,000.00 per occurrence,
9 covering as appropriate both general liability and professional liability arising
10 from pollution conditions.

11 (c) For the duration of this Consent Order, Respondents shall satisfy, or shall ensure
12 that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the
13 provision of employer's liability insurance and workmen's compensation insurance for all persons
14 performing work on behalf of the Respondents, in furtherance of this Consent Order.

15 (d) If Respondents demonstrate by evidence satisfactory to EPA that any contractor or
16 subcontractor maintains insurance equivalent to that described above, or insurance covering the same
17 risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need
18 provide only that portion of the insurance described above which is not maintained by the contractor
19 or subcontractor.

20 (e) Prior to commencement of any work under this Consent Order, and annually
21 thereafter on the anniversary of the effective date of this Consent Order, Respondents shall provide to
22 EPA certificates of insurance for insurance required by paragraph 91.

23 92. The Respondents agree to indemnify and hold the United States Government and the Coeur
24 d'Alene Tribe, their agencies, departments, agents, and employees harmless from any and all claims or
25 causes of action arising from or on account of acts or omissions of Respondents, their employees,
26 agents, servants, receivers, successors, or assignees, or any persons including, but not limited to,
27 firms, corporations, subsidiaries, and contractors, in carrying out activities under this Consent Order.

1 The United States Government and the Coeur d'Alene Tribe or any agency or authorized
2 representative thereof shall not be held as a party to any contract entered into by Respondents in
3 carrying out activities under this Consent Order.

4 XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

5 93. The effective date of this Consent Order shall be the date it is signed by EPA.

6 94. This Consent Order may be amended by mutual agreement of EPA, in consultation with the
7 Tribe, and Respondents. Amendments shall be in writing and shall be effective when signed by EPA.
8 EPA Remedial Project Managers do not have the authority to sign amendments to this Consent Order.
9 EPA Remedial Project Managers do have the authority to make modifications to the Statement of Work
10 and any work plans produced under the Statement of Work.

11 95. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans,
12 specifications, schedules, and any other writing submitted by the Respondents will be construed as
13 relieving the Respondents of its obligation to obtain such formal approval as may be required by this
14 Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports),
15 specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA,
16 incorporated into this Order.

17 XXVIX. TERMINATION AND SATISFACTION

18 96. This Consent Order shall terminate when the Respondents demonstrate, in writing, and
19 certify to the satisfaction of EPA that all activities required under this Consent Order, including any
20 additional work, payment of past costs, response and oversight costs, and any stipulated penalties
21 demanded by EPA, have been performed and EPA has approved the certification. This notice shall
22 not, however, terminate Respondents' obligation to comply with Sections XVI, XVII and XXI of this
23 Consent Order.

24 97. The certification of completion described in paragraph 96 of this Consent Order shall be
25 signed by a responsible official representing each Respondent. Each representative shall make the
26 following attestation: "I certify that the information contained in or accompanying this certification is

1 true, accurate, and complete." For purposes of this Consent Order, a responsible official is a
2 corporate official who is in charge of a principal business function.

3
4 **XXX. SIGNATORIES**

5 **Respondents**

6
7
8 BY: _____ DATE: _____
9 James Comerford
10 President, Carney Products Company, Ltd.

11 BY: _____ DATE: _____
12 Mayor Ernest Pendell
13 City of St. Maries

14 **Coeur d'Alene Tribe**

15
16
17 BY: _____ DATE: _____
18 Ernest Stensgar, Chairman
19 Coeur d'Alene Tribe

20 **It is so ORDERED and Agreed by the U.S. Environmental Protection Agency**

21
22
23 BY: _____ DATE: _____
24 Michael F. Gearheard, Director
25 Office of Environmental Cleanup
26 U.S. Environmental Protection Agency, Region 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| | | | | | |
|---------|------------|----------|------|------|-----------|
| | McAllister | Kowalski | Gold | Wong | Gearheard |
| Initial | | | | | |
| Date | | | | | |