		2010 DEC 21 AM 10: 38
IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	EPA RECION
Standard Mine Site,)	U.S. EPA Region 8 EPA REGION VIII
Gunnison County, Colorado)	CERCLA Docket No. CERCLA-08-2011-0001
)	
Elijah J. Valencia,)	
)	PROCEEDING UNDER SECTION
SETTLING PARTY.)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. This authority was further redelegated to the supervisors for the Legal Enforcement Program and the Technical Enforcement Program in the Office of Enforcement, Compliance and Environmental Justice by EPA Region 8 Delegation 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to Assistant Attorney General for Environment and Natural Resources Division.

 This Settlement Agreement is made and entered into by EPA and Elijah J. Valencia (Settling Party). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Standard Mine Site, located approximately thirty (30) miles northwest of Gunnison and ten (10) miles west of Crested Butte in Gunnison County, Colorado, in the Ruby Range of the Gunnison National Forest (Site). EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. The Site encompasses approximately ten (10) acres of land that have been disturbed by past mining activities and includes adits and shafts that access approximately 8,400 feet

of open mine workings on six operating levels, waste rock and tailings piles, concrete footings and stem walls, a tailings pond, and various mine-related structures. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the 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 14, 2005. EPA has taken response actions at the Site including de-watering the tailing impoundment dam, channelizing surface water created from storm run-off and spring-time snow melt to flow around the Site and into Elk Creek, channelizing Elk Creek to direct it away from mine waste features at the Site, and constructing a mine waste repository. EPA is currently performing a remedial investigation/feasibility study for the Site.

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has no financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and his heirs, successors and assigns. Any change in ownership or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to resolve

his alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section IX, subject to the Reservations of Rights by EPA in Section X.

V. <u>DEFINITIONS</u>

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

a. "Settlement Agreement" shall mean this Settlement Agreement and the attached appendix. In the event of conflict between this Settlement Agreement and the appendix, the Settlement Agreement shall control.

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

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

d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVII.

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

f. "Financial Information" shall mean those financial documents identified in Appendix A.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Party.

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

j. "Settling Party" shall mean Elijah J. Valencia.

k. "Site" shall mean the Standard Mine Superfund Site, located approximately thirty (30) miles northwest of Gunnison and ten (10) miles west of Crested Butte in Gunnison County, Colorado, in the Ruby Range of the Gunnison National Forest. l. "State" shall mean the State of Colorado, including its departments, agencies, and instrumentalities.

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

VI. <u>SITE ACCESS, ENVIRONMENTAL COVENANTS,</u> <u>AND REASONABLE STEPS</u>

12. <u>Site Access</u>. With respect to any real property included within the Site that is now owned or controlled by Settling Party or subsequently acquired by Settling Party, Settling Party shall:

a. Provide EPA and the State, and their representatives and contractors access at all reasonable times to such property and to any other property owned or controlled by Settling Party to which access is determined by EPA or the State to be required for the purpose of conducting any response activity related to the Site, including but not limited to:

1. Monitoring, investigation, removal, remedial or other activities;

2. Verifying any data or information submitted to EPA or the State;

3. Conducting investigations relating to contamination at or near the Site;

4. Obtaining samples; and

5. Assessing the need for, planning, or implementing response actions at or near the Sites.

b. Refrain from using such property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions already performed or instituted at the Site, or the response actions or reclamation work to be performed or instituted in the future.

c. Settling Party shall notify EPA of any change in ownership or transfer by Settling Party of any real property within the Site. Settling Party shall condition any such transfer upon compliance with the terms of this Settlement Agreement. Any such transfer shall in no way alter Settling Party's responsibilities under this Settlement Agreement.

d. Notwithstanding any provision of this Consent Decree, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

13. <u>Environmental Covenants</u>. At the request of EPA or the State, Settling Party shall execute and return to EPA or the State for recording in the appropriate county

land office an environmental covenant for properties owned by Settling Party determined to be necessary by EPA or the State as part of a response for the Site. Settling Party shall execute such documents and return them to EPA or the State within thirty (30) days following any request to do so from EPA or the State.

14. <u>Reasonable Steps</u>. Settling Party shall take reasonable steps with respect to any continuing or future releases of hazardous substances from any real property owned by Settling Party within the Site and to prevent or limit human, environmental, or natural resources exposure to earlier releases.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

15. Stipulated Penalty.

a. If Settling Party does not comply with his obligations set forth in Paragraph 12 and 13 above, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$1000.00 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall made by wire transfer and reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # 08-JM, and the EPA docket number for this action. Settling Party shall send the wire transfer payment directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York ABA=021030004 Account=68010727 SWIFT address = FRNYUS33 33 Liberty Street New York NY 10045

The Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency "

At the time of payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions) and by email to <u>acctsreceivable.cinwd@epa.gov</u>, and to:

John Works US EPA Region 8 Enforcement Specialist 1595 Wynkoop Street Denver, Colorado 80202 And

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

c. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the date the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

16. In addition to stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from performance of any other requirements of this Settlement Agreement.

VIII. RELEASE OF NOTICE OF FEDERAL LIEN

18. Within 60 days after the Effective Date of this Settlement Agreement, EPA shall file a Release of Notice of Federal Lien in the real estate records for Gunnison County, State of Colorado. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on February 21, 2006 under file number 563028.

IX. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon ninety days after EPA's issuance of the Record of Decision or upon receipt by EPA of the Environmental Covenant in accordance with Paragraph 13, which ever first occurs. This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant not

to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, the covenant not to sue shall be null and void. This covenant not to sue extends only to Settling Party and does not extend to any other person.

X. <u>RESERVATIONS OF RIGHTS BY EPA</u>

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 29(b), is false or, in an material respect, inaccurate.

22. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

XI. COVENANT NOT TO SUE BY SETTLING PARTY

23. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

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

25. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Except as provided in Paragraph 25, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of

CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations. In the event that Settling Party's waiver of claims becomes inapplicable in accordance with Paragraph 25, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has resolved his liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for "matters addressed" as defined above.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section IX.

XIII. CERTIFICATION

29. Settling Party hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to his potential liability regarding the Site since notification of potential liability by EPA and that he has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. \S 9604(e) and 9622(e);

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not

materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XIV. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA: Andrea Madigan US EPA Region 8 1595 Wynkoop Street Denver, Colorado 80202

<u>As to Settling Party</u>: Elijah J. Valencia P.O. Box 5359 Crested Butte, Colorado 81225

XV. INTEGRATION/APPENDICES

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

Appendix A is a list of the financial documents submitted to EPA by Settling Party.

XVI. PUBLIC COMMENT

32. This Settlement Agreement is subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. EFFECTIVE DATE

The effective date of this Settlement Agreement shall be the date upon 33. which EPA issues written notice that the public comment period pursuant to Paragraph 31 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

Elijah J. Valencia VALENCEA 9-22-10 [Date]

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8

By: Kalling hand Kelcey Land

Date: 10/19/10

Director, Technical Enforcement Program Office of Enforcement, Compliance and Environmental Justice

By: Mail Colu Matthew Cohn

Date: 10/26/10

Supervisory Attorney, Legal Enforcement Program Office of Enforcement, Compliance and Environmental Justice

UNITED STATES DEPARTMENT OF JUSTICE

Dated: 12/18/10

IGNACIA S. MORENÓ Assistant Attorney General Environment and Natural Resources Division United States Department of Justice

Dated: 12/2/10

Marcello Mollo Trial Attorney Environmental Enforcement Section United States Department of Justice

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APPENDIX A

FINANCIAL DOCUMENTS PROVIDED BY SETTLING PARTY TO EPA

Copies of Federal Income Tax Returns (Form 1040) for the years 2007, 2008 and 2009

Financial Data Request Form for the Individual Ability to Pay Claim, dated April 20, 2010 as supplemented on August 19, 2010