

UNITED STATES DEPARTMENT OF JUSTICE
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8
AND
STATE OF MONTANA

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)
IN THE MATTER OF:)

Lockwood Solvent Ground Water Plume)
Superfund Site)

MAC LTT, LLC and MAC LTT)
Manufacturing, Inc.,)

Purchaser)

Proceeding Under the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, 42 U.S.C. §§ 9601–9675.)

CERCLA Docket No. CERCLA-08-2021-0001

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND COVENANTS NOT
TO SUE** (MAC LTT, LLC, Kent, Ohio and
MAC LTT Manufacturing, Inc., Billings,
Montana)

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Covenants Not to Sue (“Settlement”) is entered into by and between the United States on behalf of the Environmental Protection Agency (EPA), State of Montana (the “State”) and MAC LTT, LLC (“MAC”), which is purchasing the Property (defined below), and MAC LTT Manufacturing, Inc., a related entity to MAC, which, although not purchasing the Property, has leased the Property since 2013 and will continue to lease and operate the Property after MAC purchases the Property (“Lessee,” and with MAC collectively, “Purchaser”). This Settlement provides for the payment of certain response costs incurred or to be incurred by the United States at or in connection with the Property located at 1430 U.S. Highway 87 East, Billings, Montana (the “Property”), which is a portion of the approximately 580-acre area known as the Lockwood Solvent Ground Water Plume Superfund Site (“Site”). The Property is more fully described in Exhibit 1.

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional official. The DEQ enters into this Settlement pursuant to CERCLA, 42 U.S.C. §§ 9601-9675.

3. The United States, the State, and Purchaser (collectively, “the Parties”) agree that the United States District Court for Montana will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement.

4. The Parties agree to undertake all actions required by the terms and conditions of this Settlement. In view of the risk of claims under CERCLA being asserted against Purchaser upon becoming an owner or operator of the Property, one of the purposes of this Settlement is to resolve Purchaser’s potential CERCLA liability in accordance with the covenants not to sue in Section XIII (United States’ Covenants Not to Sue and Section XIV (State’s Covenant Not to Sue), subject to reservations and limitations contained in Section XV (Reservations of Rights by United States) and Section XVI (Reservations of Rights by State).

5. The resolution of this potential liability, in exchange for Purchaser’s reimbursement of certain response costs is fair, reasonable, and in the public interest.

6. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the statement of facts in Section IV (Statement of Facts) of this Settlement. Purchaser agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

7. This Settlement is binding upon the United States, including EPA, and the State. It is also binding upon MAC and Leasee, both jointly and individually, and their respective successors and assigns. Any change in ownership or corporate status of Purchaser does not alter Purchaser's responsibilities under this Settlement. Each undersigned representative of Purchaser certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, 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.

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

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXI.

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

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” shall mean:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto or under or from the Property after the Effective Date.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the response action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <http://www.epa.gov/superfund/superfund-interest-rates>.

“Lessee” shall mean MAC LTT Manufacturing, Inc., which has operated the Property pursuant to a lease since 2013 and which will lease the Property from MAC (a related entity) and will continue to operate the Property after MAC purchases the Property.

“Lockwood Solvent Site-wide Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 30 (Payment of Response Costs).

“MAC” shall mean MAC LTT, LCC, a related entity to Lessee, which will purchase the Property from Sector Corporation and lease it to Lessee.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, the State, and Purchaser.

“Property” shall mean that a portion of the Site, comprised of four parcels and encompassing approximately 7.74 acres to be acquired by Purchaser, which is generally depicted in Appendix A of this Settlement.

“Proprietary Controls” shall mean easements or covenants running with the land that: (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

“Purchaser” shall mean, collectively, MAC LTT, LLC and MAC LTT Manufacturing, Inc.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Covenants Not to Sue and all appendices attached hereto (listed in Section XXII (Integration/ Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Lockwood Solvent Ground Water Plume Superfund Site, encompassing approximately 580 acres, located in Billings, Montana, and depicted generally on the map attached as Appendix B. The Site includes the Property.

“State” shall mean the State of Montana.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

IV. STATEMENT OF FACTS

9. The 580-acre Site is located on the outskirts of the City of Billings in Yellowstone County, Montana.

10. In 1986, Lockwood Water and Sewer District personnel discovered benzene and volatile organic compounds in their water supply wells. Subsequent investigations found a groundwater contamination plume. The primary sources of contamination are Beall Trailers of Montana and Soco West (formerly, Brenntag West Inc. and Dyce Chemical).

11. In 2000, EPA placed the Site on the National Priorities List. The Site consists of two operable units (OUs): 1) OU1, which includes the Beall Source Area; and 2) OU2, which includes the Soco West Source Area. These OUs encompass the two primary source areas linked to the site-wide groundwater contamination and includes soil and groundwater components. In addition to contaminated soil and groundwater, volatile organic compounds found at the Site can disperse as vapor from shallow ground water, enter the indoor air of buildings, and be inhaled. This can pose long-term risks to public health because volatile organic compounds are known to pose human health hazards.

12. The contaminants of concern (COCs) are the following volatile organic compounds (VOCs): Perchloroethene (PCE), trichloroethene (TCE), *cis*-1,2-Dichloroethene (DCE), and vinyl chloride (VC). VOCs means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate, which participates in atmospheric photochemical reactions, except those designated by EPA as having negligible photochemical reactivity.

13. With respect to the OU1 Beall Source Area, EPA investigation documented that the former Beall facility manufactured and repaired tanker truck trailers for the transportation of asphalt. From 1978 to 1990, the former Beall facility owner and operator cleaned trailers with steam and industrial solvents prior to trailer maintenance or repair and discharged the wastewater from the steam-cleaning bay to a septic system and drain field.

14. In a 2005 Record of Decision, EPA selected a remedy for the Site to address groundwater and subsurface soil contaminated with volatile organic compounds from the two main source areas in OUs 1 and 2. Major site-wide remedy components are: 1) long-term groundwater monitoring; 2) institutional controls, including establishment of a controlled groundwater area; and 3) risk mitigation measures. For the OU1 Beall Source Area Groundwater and Plume Leading Edge, the selected remedy additionally provides for treatment with enhanced bioremediation. For the OU1 Beall Source Area Soil, the remedy provides for treatment of vadose soil with soil vapor extraction.

15. EPA is conducting a fund-lead response action for the OU1 Beall Source Area to implement the selected remedy.

16. In 2017, EPA initiated a pilot project at the OU1 Beall Source Area which involved the demolition of the former Beall facility steam-cleaning bay building and construction of a new steam-cleaning bay building. This was necessary to gain access to the contaminated soil beneath the former steam-cleaning bay building. As part of this response action, EPA excavated the primary source area of contaminated soil from beneath the former steam-cleaning bay building and treated the soil in a containment area on the ground surface using *ex-situ* soil vapor extraction (SVE). While the soil was out of the ground, EPA installed a new SVE system as part of a pilot project to treat *in-situ* the residual contaminated soil at depths up to 45 feet below ground surface. Excavated soils that met cleanup standards were returned to the excavated area while soils above standards were properly disposed of at a certified solid waste facility. In 2018, EPA began operation of the *in-situ* SVE system.

17. OU1 is currently in the remedial design phase where the technical specifications for the selected remedy and technologies are designed. The site-specific OU1 remedial design entails ongoing groundwater sampling and the operation of the *in-situ* SVE Pilot System. EPA is collecting and evaluating sampling results to determine the effectiveness of the *in-situ* SVE Pilot System as the remedy for OU1. If successful, the system will continue to operate and may be expanded in the future. The remedial action phase involving the actual construction or implementation of the Selected Remedy will follow the remedial design phase.

18. EPA made attempts to negotiate a CERCLA Remedial Design/Remedial Action Consent Decree with the potentially responsible party for the OU1 Beall Source Area, Beall Trailers of Montana. However, in 2012, Beall Trailers of Montana entered the federal bankruptcy process and ceased all operations at this location. EPA is conducting the OU1 cleanup.

19. Since February 28, 2013, Lessee has leased the former Beall facility—which is the subject Property—to custom manufacture liquid tank trailers. Lessee did not perform a Phase I environmental assessment prior to the 2013 lease. Lessee, as a current tenant, has

coordinated with EPA by providing access to the Property to implement the pilot project at the OU1 Beall Source Area.

20. In 2018, the Montana Department of Natural Resources and Conservation adopted Rule 1966, which established a permanent 331-acre Lockwood Solvent Groundwater Plume Site Controlled Groundwater Area (LSGPS CGWA) located east of Billings, Montana. The LSGPS CGWA covers an area approximately 0.52 square miles and is generally located south and east of the Yellowstone River at Lockwood, Montana, between Rosebud Lane to the south, the Yellowstone River to the north and west, and Maier Road on the east (the east Section line of Sections 26 and 35, T1N, R26E). The boundaries are wholly within: N2N2 Section 35, T1N, R26E; S2 Section 26, T1N, R26E; and S2N2 Section 26, T1N, R26E.

21. The purpose of the LSGPS CGWA is twofold: 1) prevent exposure to CoCs in groundwater where the cleanup levels, as specified in the 2005 Record of Decision, are exceeded; and 2) prevent groundwater withdrawals from the CGA alluvial and bedrock aquifers that may induce or alter contaminant migration. The CGA imposes the following groundwater usage restrictions: 1) a complete moratorium on all new water supply wells, including but not limited to: private, community or municipal water supply wells, irrigation wells and industrial use wells, within the lateral boundaries of the LSGPS CGA; 2) the allowance of groundwater monitoring wells, test wells and remediation wells within the LSGPS CGA; 3) the allowance of replacement wells as long as the original well was within the LSGPS CGA and the property owner, where the well resides, has a water right filed with the Montana Department of Natural Resources; and 4) a prohibition on change of purpose for any existing or replacement well within the LSGPS CGA boundary.

22. MAC LTT, LLC will purchase for fair market value the Property, which is depicted generally on the map attached as Appendix A and is located within Sections 26 and 35, Township 01 North, Range 26 East.

23. The Property is located within the OU1 Beall Source Area.

24. The Property overlays the State-established permanent LSGPS CGWA, which encompasses all or portions of Sections 26 and 35, Township 01 North, Range 26 East.

25. The legacy disposal of hazardous substances during the 1978-1991 period at or from the OU1 Beall Source Area predates Lessee's 2013 lease of the Property.

26. MAC is buying the Property in order for its related entity, Lessee, to continue manufacturing custom liquid tank trailers to meet its customers' petroleum transportation needs.

27. Lessee has not used the steam-cleaning bay as part of its operation since entering into the 2013 lease.

28. Purchaser represents, and for the purposes of this Settlement EPA and the State rely on those representations, that Purchaser has had no prior involvement with the Site, other than that Lessee has been affiliated with a potential liable party through a contract for the lease of the Property.

V. PAYMENT OF RESPONSE COSTS

29. Within thirty (30) days of the Effective Date of this Settlement, Purchaser shall pay to EPA a sum of \$150,000 in accordance with Paragraph 30a (instructions for EPA payments required by this Settlement) and shall pay to the State a sum of \$25,000 in accordance with Paragraph 30b (instructions for State payments required by this Settlement).

30. Payment Instructions.

a. **EPA Payments.** All EPA payments required by this Settlement are to be made in accordance with this Paragraph and shall be made at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to Site/Spill ID Number MT0007623052, EPA Docket Number _____, and the purpose of the payment. At the time of each payment, Purchaser shall send notice that such payment has been made to EPA Remedial Project Manager Tillman McAdams, Mail stop: R08-SEMD-SRB-RSC, Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, including these references.

b. **State Payments.** All State payments required by this Settlement are to be made in accordance with this Paragraph and shall be made by electronic funds transfer to the State not later than five (5) business days after the Effective Date as defined in Paragraph XXI. The State shall provide its electronic funds transfer information to Lockwood Solvent Site-wide Special Account no later than ten (10) days prior to the date on which payment is due.

31. Deposit of Payment.

a. **EPA Deposit.** Of the sum total specified in Paragraph 29, \$150,000 shall be deposited by EPA into the Lockwood Solvent Site-wide Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund if funds are no longer needed to conduct or finance response actions at the Site. A decision by EPA to deposit the payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions of this Settlement or in any other forum.

b. **State Deposit.** Upon receipt of any funds paid under this Agreement, the State will deposit the funds into a State special revenue fund, as provided for in MCA Section 17-2-102(1)(b)(i), to be known as the “Lockwood Solvent Site-wide Special Account (Lockwood Fund)”, which shall be held and maintained by the State for the purposes of remedial action or operations and maintenance at the Site. All interest and other earnings on the Lockwood Fund shall be paid into the Lockwood Fund, and no portion of the Lockwood Fund or any earnings on the Lockwood Fund is to be treated as a general revenue source or as State General Fund money, nor is

any portion to be converted or transferred to the State General Fund, and may not be transferred to any other fund except as provided herein.

32. **Interest.** In the event that any payment is not made by the date required, Purchaser shall pay Interest on the unpaid balance. The Interest shall begin to accrue on the Effective Date and shall accrue through the date of Purchasers' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States or State by virtue of Purchaser's failure to make timely payments under this Section.

VI. PROPERTY REQUIREMENTS

33. **Notices.** Purchaser shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

34. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Purchaser shall: (i) provide EPA, the State, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property at all reasonable times and to any other persons that are authorized to conduct response actions or natural resource assessment or restoration at the Property, including those activities listed in Paragraph 34.a (Access Requirements); (ii) exercise appropriate care with respect to hazardous substances found at the Property as described in Paragraph 34.b (Appropriate Care), and (iii) refrain from using such Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action, including the restrictions listed in Paragraph 34.c (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Property:

- (1) Conducting investigations regarding contamination at or near the Site;
- (2) Obtaining samples, including but not limited to, semi-annual sampling of groundwater monitoring wells;
- (3) Assessing the need for, planning, implementing, or monitoring response actions including, but not limited to, operating the *in-situ* SVE Pilot System and *in-situ* Bio-Remediation Pilot (SB);
- (4) Assessing implementation of quality assurance and quality control practices as defined in any approved quality assurance quality control plan;

(5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents consistent with Section VII (Access to Information);

(6) Assessing Purchaser's compliance with the Prospective Purchaser Agreement;

(7) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(8) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Property.

b. **Appropriate Care.** Purchaser shall take reasonable steps to

(1) Stop any continuing releases;

(2) Prevent any threatened future releases; and

(3) Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

c. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall (i) remain in compliance with any land use restrictions established in connection with any response action at the Property, (ii) implement, maintain, monitor, and report on Institutional Controls, and (iii) not impede the effectiveness or integrity of any Institutional Control employed at the Property in connection with a response action. The following is a list of land, water, or other resource use restrictions applicable to the Property:

(1) Refrain from use of the Property that in any way materially interferes with the construction, operation, and maintenance of the Remedial Action, including, but not limited to, access to and the operation and maintenance of a) ground water monitoring wells, b) the in-situ PVE Pilot System (or other EPA-approved technology), or c) any equipment or infrastructure constructed or used for the Remedial Action, except as otherwise authorized by EPA.

(2) Implement institutional controls that restrict use of all or portions of the Property as requested by EPA, the State of Montana, or Yellowstone County;

(3) Refrain from drilling new wells or excavating to groundwater on the Property;

(4) Comply with the Montana Department of Natural Resources' rule establishing the LSGPS CGWA (MAR Notice No. 36-22-198 Notice of Adoption (October 5, 2018));

(5) With respect to Monitoring Well MW012, on the Property, ensure that roadways and structures avoid topping the well during construction activities. If a monitoring well must be moved to accommodate building or other needs, notify and coordinate with EPA at least 60 days in advance of new well construction as to the proposed relocation, and obtain EPA written approval prior to the relocation.

(6) Refrain from excavating or engaging in new construction in the former Beall facility steam-cleaning bay area, except as provided by the EPA Remedial Action or as otherwise authorized by EPA.

(7) If soils within the former Beall facility steam-cleaning bay area need to be disturbed deeper than 12 inches and approval has been granted by EPA, ensure that a soils management plan is on file that provides guidance as to the health and safety precautions that must be in place to protect human health and the environment; and

(8) Ensure that any new structures on the Property will be constructed in a manner that minimizes the potential risk of inhalation of VOCs.

35. Purchaser shall not Transfer the Property unless it has executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding the Property in accordance with Paragraph 8 (Proprietary Controls).

36. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Purchaser shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

37. Notice to Successors-in-Title

a. Purchaser shall within fifteen (15) days after the Effective Date, submit for EPA approval a notice to be filed regarding Purchaser's Property in the appropriate land records office. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or related to, the Site, (ii) EPA has selected a response action for the Site and (iii) Purchaser has entered into an Administrative Settlement Agreement requiring compliance with property requirements in Section VI; and (3) identify the name, docket number, and effective date of this Settlement. Purchaser shall record the notice within ten (10) days after EPA's approval of the notice and submit to EPA, within ten (10) days thereafter, a certified copy of the recorded notice.

b. Purchaser shall, prior to entering into a contract to Transfer its Property, or sixty (60) days prior to transferring its Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a response action regarding the Site, that the Purchaser has entered into an Administrative Settlement Agreement requiring compliance with property

requirements in Section VI (identifying the name, docket number, and the Effective Date of this Settlement); and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

For so long as Purchaser is an owner or operator of the Property or any part thereof, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property or any part thereof provide access and cooperation to EPA and the State, their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property or any part thereof implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any response action, and not contest EPA's authority to enforce any land use restrictions and Institutional Controls on the Property. After Purchaser's payment under Paragraph 30a and b and upon written demonstration to EPA and DEQ that a successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof agrees to comply with the requirements of this Paragraph 37, EPA and DEQ will notify Purchaser that its obligations under the Settlement are terminated with respect to the Property or any part thereof, except for its obligations under Record Retention (Section VIII) and Access to Information (Section VII).

38. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA and DEQ, their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's CERCLA authority to enforce any land use restrictions and institutional controls on the Property or any part thereof.

39. Purchaser shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use the Property or any part thereof as of the Effective Date.

40. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water or other resource use restrictions and ICs, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable federal or state statute or regulations.

VII. ACCESS TO INFORMATION

41. Purchaser shall comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

42. Purchaser shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Purchaser's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information. Purchaser shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of any work related to response actions that may be taken on the Property.

43. Privileged and Protected Claims

a. Purchaser may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Purchaser complies with Paragraph 43.b, and except as provided in Paragraph 43.c.

b. If Purchaser asserts such a privilege or protection, it shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Purchaser shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Purchaser shall retain all Records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser's favor.

c. Purchaser may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Purchaser is required to create or generate pursuant to this Settlement.

44. **Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section VIII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Purchaser asserts business confidentiality claims. Records that Purchaser claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Purchaser that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Purchaser.

45. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

VIII. RECORD RETENTION

46. Purchaser agrees to retain and make available to EPA and the State all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the Effective Date unless otherwise agreed to in writing by the Parties. At the end of ten years, Purchaser shall notify EPA and the State of the location of such documents and shall provide EPA and the State with an opportunity to copy any documents at the expense of EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

IX. COMPLIANCE WITH OTHER LAWS

47. Nothing in this Settlement limits Purchaser's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

X. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 49.

49. **Informal Dispute Resolution.** If Purchaser objects to any EPA action taken pursuant to this Settlement, Purchaser shall send EPA, with a copy to DOJ, a written Notice of Dispute describing the objection(s) within 20 days after such action. EPA and Purchaser shall have 20 days from EPA's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Purchaser pursuant to this Section shall be in writing and shall, upon signature by EPA and Purchaser, be incorporated into and become an enforceable part of this Settlement.

50. **Formal Dispute Resolution.** If EPA and Purchaser are unable to reach an agreement within the Negotiation Period, Purchaser shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the Remedial Project Manager ("RPM"),

with a copy to DOJ. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the EPA Region 8 Division Director level or higher will issue a written decision on the dispute to Purchaser, with a copy to DOJ. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

51. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Purchaser under this Settlement.

XI. FORCE MAJEURE

52. "Force Majeure," for purposes of this Settlement, is defined as any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser's contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser's best efforts to fulfill the obligation. The requirement that Purchaser exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Purchaser intends or may intend to assert a claim of force majeure, Purchaser shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 8, within 20 days of when Purchaser first knew that the event might cause a delay. Within 20 days thereafter, Purchaser shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Purchaser shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Purchaser shall be deemed to know of any circumstance of which Purchaser, any entity controlled by Purchaser, or Purchaser's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 52 and whether Purchaser has exercised best efforts under Paragraph 52, EPA may, in its unreviewable discretion, excuse in writing Purchaser's failure to submit timely or complete notices under this Paragraph.

54. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force

majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure

55. If Purchaser elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 52 and 53. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement identified to EPA.

56. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Purchaser from meeting one or more deadlines under the Settlement, Purchaser may seek relief under this Section.

XII. CERTIFICATION

57. By entering into this Settlement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site.

XIII. UNITED STATES' COVENANTS NOT TO SUE

58. Except as provided in Section XV (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination and the response costs paid pursuant to Paragraph 30. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 57. This covenant extends only to Purchaser and do not extend to any other person.

59. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Purchaser, if the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site, or the certification made by Purchaser in Paragraph 57, is false or in any material respect, inaccurate.

XIV. STATE'S COVENANT NOT TO SUE

60. Except as provided in Section XVI (Reservations of Rights by State), the State covenants not to sue or to take administrative action against Purchaser pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Existing Contamination and payment. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to the State by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 57. This covenant extends only to Purchaser and do not extend to any other person. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the State to seek or obtain further relief from Purchaser, if the information provided to the State by Purchaser relating to Purchaser's involvement with the Site, or the certification made by Purchaser in Paragraph 57, is false or in any material respect, inaccurate.

XV. RESERVATIONS OF RIGHTS BY UNITED STATES

61. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States, including EPA, to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, or from taking other legal or equitable action as it deems appropriate and necessary.

62. The covenants set forth in Sections XIII (Covenants by United States) do not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for violations of federal law that occur during Purchaser's ownership of the Property;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site, except as relates to Existing Contamination from the Site or Property.

63. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

XVI. RESERVATIONS OF RIGHTS BY STATE

64. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the State from seeking legal or equitable relief to enforce the terms of this Settlement, or from taking other legal or equitable action as it deems appropriate and necessary.

65. The covenant set forth in Sections XIV (Covenants by the State) does not pertain to any matters other than those expressly identified therein. The State reserves, and this Settlement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

a. liability for failure by Purchaser to meet a requirement of this Settlement;

b. criminal liability;

c. liability for violations of federal law that occur during Purchaser's ownership of the Property;

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

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site, except as relates to Existing Contamination from the Site or Property.

66. With respect to any claim or cause of action asserted by the State, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

XVII. COVENANTS BY PURCHASER

67. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, its contractors or employees, or the State with respect to Existing Contamination, the response costs paid pursuant to Paragraph 29 or this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law related to the Site, or any claims arising out of response activities at the Site, Existing Contamination, the response costs paid pursuant to Paragraph 29, and this Settlement.

68. 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 any of the reservations set forth in Section XV (Reservations of Rights by United States) or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVI (Reservations of Rights by the State), other than in Paragraphs 62.a and 65.a (liability for failure to meet a requirement of the Settlement), 62.b and 65.b (criminal liability), or 62.c and 65.c. (violations of federal/state law during Purchaser's ownership of the Property), but only to the extent that Purchasers' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

XVIII. OTHER CLAIMS

69. By issuance of this Settlement, the United States and EPA and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Purchaser. The United States or EPA and the State shall not be deemed a party to any contract entered into by Purchaser or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

70. Except as expressly provided in Section XIII (Covenants by United States), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Purchaser or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XIX. EFFECT OF SETTLEMENT/CONTRIBUTION

72. Nothing in this Settlement creates any rights in, or grants any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party 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 herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

73. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are Existing Contamination, the response costs paid pursuant to Paragraph 30, and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States, the State, or any other person. However, if the United States exercises rights under the reservations in Section XV (Reservations of Rights by United States) or the State exercises rights under the reservations in Section XVI (Reservations of Rights by the State), other than in Paragraphs 62.a and 65.a (liability for failure by Purchaser to meet a requirement of this Settlement), 62.b. and 62.b (criminal liability), or 62.c and 65.c. (liability for violations of federal law that occur during Purchaser’s ownership of the Property), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

74. The Parties agree that this Settlement shall constitute an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

75. Purchaser shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Purchaser shall, with respect to any suit or claim brought against it for matters

related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Purchaser shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XX. PUBLIC COMMENT

76. This Settlement shall be subject to a thirty (30) day public comment period, after which the United States or the State may withhold its consent or seek to modify this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXI. EFFECTIVE DATE

77. The effective date of this Settlement shall be the date upon which each of the following have occurred: (a) EPA issues written notice to Purchaser that the United States and the State have fully executed the Settlement after review of and response to any public comments received, and (b) MAC takes title to the Property (Purchaser shall notify EPA and the State within three (3) days of taking title to the Property).

XXII. INTEGRATION/APPENDICES

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

- a. Appendix A is map and deed of the Property.
- b. Appendix B is a map of the Site, which depicts OU1 as "Area B."

XXIII. DISCLAIMER

79. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXIV. ENFORCEMENT

80. Notwithstanding Paragraph 48 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the United States District Court for Montana ("Court"). In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

81. If the United States files a civil action as contemplated by Paragraph 80, above, to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

82. If Purchaser fails to comply with the terms of this Settlement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement or otherwise obtain compliance.

XXV. NOTICES AND SUBMISSIONS

83. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered, or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

1400 Fairchild Avenue
Kent, OH 44240
Attn: James Maiorana, President and Michael A. Conny, CEO

With copy to (which shall not constitute notice):
Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.
4775 Munson St. N.W.
Canton, OH 44735
Attn: Christopher R. Hunt, Esq.
Direct Dial: 330-244-2369
Telephone: 330-497-0700
Facsimile: 330-497-4020
Email: chunt@kwgd.com

All submissions to U.S. EPA shall be addressed to:

EPA Remedial Project Manager Tillman McAdams
Mail stop: R08-SEMD-SRB-RSC
Montana Operations Office
Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59626

All submissions to the State shall be addressed to:

Richard Sloan
Senior Environmental Project Office
Department of Environmental Quality
1225 Cedar Street
PO Box 200901
Helena, MT 59620-0901
rloan@mt.gov

Jessica Wilkerson, Esq.
Special Assistant Attorney General
Department of Environmental Quality
1225 Cedar Street
PO Box 200901
Helena, MT 59620-0901
jessica.wilkerson@mt.gov

IT IS SO AGREED:

MAC LTT, LLC

BY:

Michael A. Long 10/1/2020

Date

MAC LTT MANUFACTURING, INC.

BY:

Michael A. Long 10/1/2020

Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

**CHRISTOPHER
THOMPSON**

Digitally signed by
CHRISTOPHER THOMPSON
Date: 2020.10.08 13:43:24 -06'00'

Christopher A. Thompson
Associate Regional Counsel for Enforcement
Region 8

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:


Jeffrey Bossert Clark
Assistant Attorney General
Environment and Natural Resources Division

Date

IT IS SO AGREED:

STATE OF MONTANA

BY:



October 5, 2020

Shaun McGrath
Director
Department of Environmental Quality

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:



Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

Date

APPENDIX A

LEGAL DESCRIPTION

PARCEL A: That part of $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ of Section 35, Township 1 North, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana, described as Tract 2, of Certificate of Survey No 1154 on file in the office of the Clerk and Recorder of said County, under Document No. 859463.

PARCEL B: Lot 1, of Bucks Subdivision, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 738920. TOGETHER with that part of vacated alley adjoining. EXCEPT that part conveyed to the Montana Department of Transportation by Bargain and Sale Deed recorded June 3, 2010, under Document No. 3551696.

PARCEL C: Lot 2A, of Bucks Subdivision (Lot 2, Amended), in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 896126.

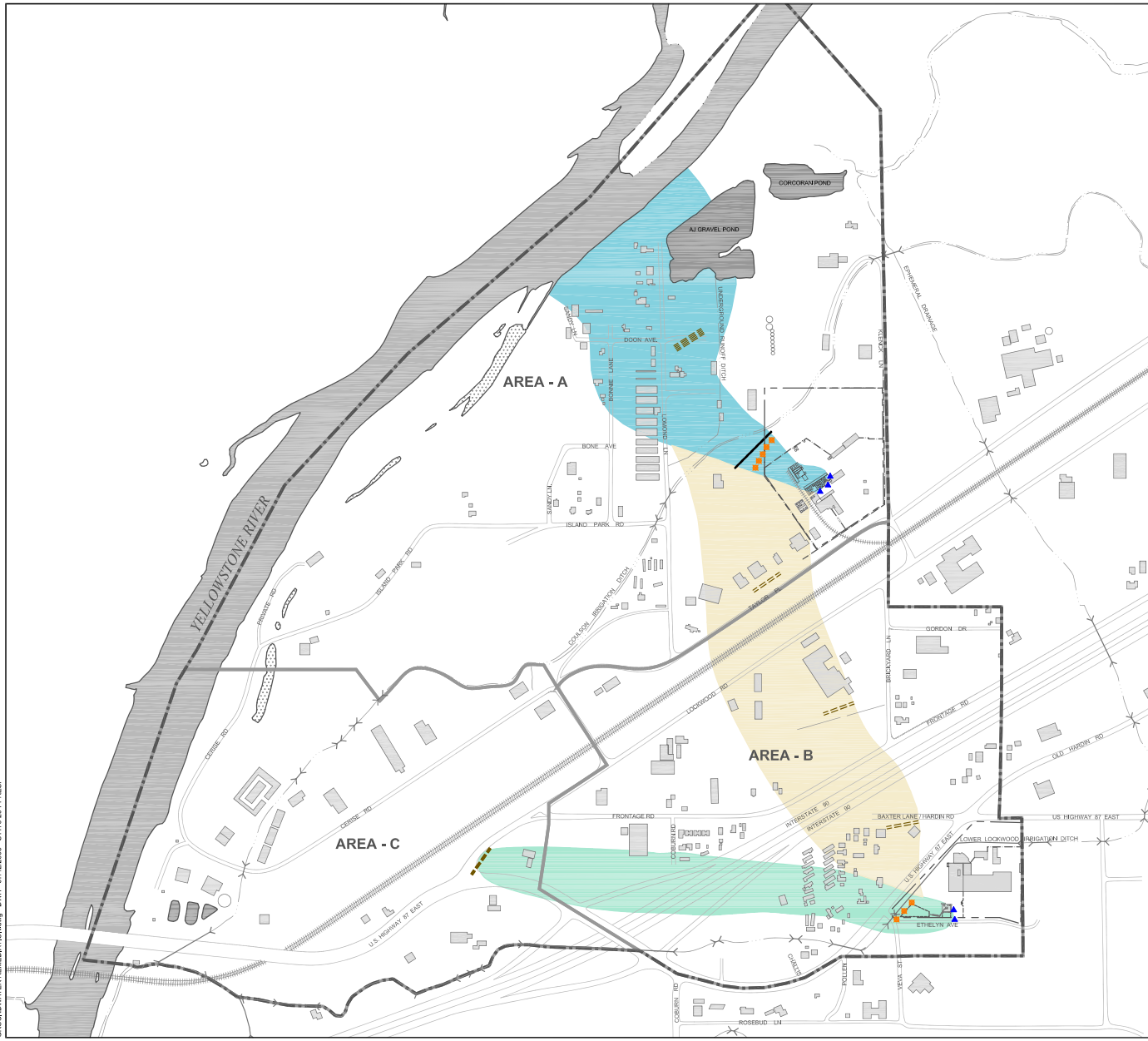
PARCEL D: That part of $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ of Section 35, Township 1 North, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana, described as follows:

Beginning at the Northwest corner of the $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ of Section 35; thence running South along the West boundary line of the $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ of said Section 35 a distance of 660 feet; thence East at right angles for a distance of 132 feet; thence North and parallel to the West line of the $NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ of said section a distance of 660 feet; thence West a distance of 132 feet to the point of beginning.
















EXCEPT that part condemned by the State of Montana for the benefit and use of its State Highway Commission by Judgment and Final Order of Condemnation, Civil Case No. 44131, Yellowstone County, Montana, a certified copy of which was recorded January 12, 1971, in Book 921, Page 726, under Document No. 874658.

APPENDIX B

GROUNDWATER REMEDIATION AND CIVIL - 07/12/2005 - 51172624.PRES



Legend


-  - Recirculation Extraction Well (Enhanced Bioremediation)
-  - Recirculation Injection Well (Enhanced Bioremediation)
-  - Treatment Barrier
-  - Injection Well Rows (Enhanced Bioremediation)
-  - Culvert
-  - Site Boundary
-  - Area Delineation
-  - Railroad
-  - Building
-  - Ponds
-  - River
-  - Wetlands
-  - Concentration of PCE Exceeds MCL in April 2003
-  - Concentration of TCE Exceeds MCL in April 2003
-  - Groundwater Contamination Above Remediation Goals

Note: All Locations Approximate



LOCKWOOD SOLVENT GROUNDWATER PLUME SITE
BILLINGS, MONTANA

FIGURE 10
GROUNDWATER REMEDY COMPONENTS




Dated 10/22/2020

2020 LOCKWOOD SOLVENT ADMINISTRATIVE SETTLEMENT AGREEMENT

Errata Sheet Summarizing Corrections

1. **Cover Page.** Caption Correction: Administrative Settlement Agreement and **Covenant** Not to Sue
2. **Cover Page.** Caption Correction, Striking the following: PROCEEDING UNDER COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. §§ 9601–9675.
3. **Page 1, Paragraph 1.** Corrected text as follows: This Administrative Settlement Agreement and **Covenant** Not to Sue (“Settlement”) is entered into by and between the United States on behalf of the Environmental Protection Agency (EPA), State of Montana (the “State”) and MAC LTT, LLC (“MAC”), which is purchasing the Property (defined below), and MAC LTT Manufacturing, Inc., a related entity to MAC, which, although not purchasing the Property, has leased the Property since 2013 and will continue to lease and operate the Property after MAC purchases the Property (“Lessee,” and with MAC collectively, “Purchaser”). This Settlement provides for the payment of certain response costs incurred or to be incurred by the United States at or in connection with the Property located at 1430 U.S. Highway 87 East, Billings, Montana (the “Property”), which is a portion of the approximately 580-acre area known as the Lockwood Solvent Ground Water Plume Superfund Site (“Site”). The Property is more fully described in **Appendix A**.
4. **Page 1, Paragraph 4.** Corrected text as follows: The Parties agree to undertake all actions required by the terms and conditions of this Settlement. In view of the risk of claims under CERCLA being asserted against Purchaser upon becoming an owner or operator of the Property, one of the purposes of this Settlement is to resolve Purchaser’s potential CERCLA liability in accordance with the **covenant** not to sue in Section XIII (United States’ **Covenant** Not to Sue and Section XIV (State’s Covenant Not to Sue), subject to reservations and limitations contained in Section XV (**Reservation** of Rights by United States) and Section XVI (**Reservation** of Rights by State).
5. **Page 1, Paragraph 5.** Corrected text as follows: The resolution of this potential liability, in exchange for Purchaser’s reimbursement of certain response costs, is fair, reasonable, and in the public interest.
6. **Page 2, Paragraph 7.** Corrected text as follows: This Settlement is binding upon the United States, including EPA, and the State. It is also binding upon MAC and **Lessee**, both jointly

and individually, and their respective successors and assigns. Any change in ownership or corporate status of Purchaser does not alter Purchaser's responsibilities under this Settlement. Each undersigned representative of Purchaser certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

7. **Page 3, Paragraph 8**, "Lockwood Solvent Site-wide Special Account" Definition. Corrected text as follows: "Lockwood Solvent Site-wide Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph **31a** (Payment of Response Costs).
8. **Page 3, Paragraph 8**, "Property" Definition. Corrected text as follows: "Property" shall mean **the** portion of the Site, comprised of four parcels and encompassing approximately 7.74 acres to be acquired by Purchaser, which is generally depicted in Appendix A of this Settlement.
9. **Page 4, Paragraph 8**, "Settlement" Definition. Corrected text as follows: "Settlement" shall mean this Administrative Settlement Agreement and **Covenant** Not to Sue and all appendices attached hereto (listed in Section XXII (Integration/ Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.
10. **Page 6, Paragraph 21**. Corrected text as follows: The purpose of the LSGPS CGWA is twofold: 1) prevent exposure to **COCs** in groundwater where the cleanup levels, as specified in the 2005 Record of Decision, are exceeded; and 2) prevent groundwater withdrawals from the **LSGPS CGWA** alluvial and bedrock aquifers that may induce or alter contaminant migration. The **LSGPS CGWA** imposes the following groundwater usage restrictions: 1) a complete moratorium on all new water supply wells, including but not limited to: private, community or municipal water supply wells, irrigation wells and industrial use wells, within the lateral boundaries of the LSGPS **CGWA**; 2) the allowance of groundwater monitoring wells, test wells and remediation wells within the LSGPS **CGWA**; 3) the allowance of replacement wells as long as the original well was within the LSGPS **CGWA** and the property owner, where the well resides, has a water right filed with the Montana Department of Natural Resources; and 4) a prohibition on change of purpose for any existing or replacement well within the LSGPS CGWA boundary.
11. **Page 7, Paragraph 26**. Corrected text as follows: The legacy disposal of hazardous substances during the 1978-**1990** period at or from the OU1 Beall Source Area predates Lessee's 2013 lease of the Property.
12. **Page 10, Paragraph 37**. Corrected text as follows: For so long as Purchaser is an owner or operator of the Property or any part thereof, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property or any part thereof provide access and cooperation to EPA and the State, their authorized officers, employees, representatives, and all other persons performing response

actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property or any part thereof implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any response action, and not contest EPA's authority to enforce any land use restrictions and Institutional Controls on the Property. After Purchaser's payment pursuant to **Section V (Payment of Response Costs)** and upon written demonstration to EPA and DEQ that a successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof agrees to comply with the requirements of this Paragraph 37, EPA and DEQ will notify Purchaser that its obligations under the Settlement are terminated with respect to the Property or any part thereof, except for its obligations under Record Retention (Section VIII) and Access to Information (Section VII).

13. **Pages 14-15, Paragraph 54.** Corrected text as follows: If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.
14. **Page 15, Section XIII Caption.** Corrected text as follows with corresponding change to the Table of Contents: **UNITED STATES' COVENANT NOT TO SUE**
15. **Page 15, Paragraph 58.** Corrected text as follows: Except as provided in Section XV (**Reservation** of Rights by United States), the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination and the response costs paid pursuant to **Section V (Payment of Response Costs)**. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 57. **These covenants extend** only to Purchaser and do not extend to any other person.
16. **Page 16, Paragraph 60.** Corrected text as follows: Except as provided in Section XVI (**Reservation** of Rights by State), the State covenants not to sue or to take administrative action against Purchaser pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Existing Contamination and payment. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to the State by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 57. This covenant extends only to Purchaser and do not extend to any other person. Nothing in this

Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the State to seek or obtain further relief from Purchaser, if the information provided to the State by Purchaser relating to Purchaser's involvement with the Site, or the certification made by Purchaser in Paragraph 57, is false or in any material respect, inaccurate.

17. **Page 16, Section XV Caption.** Corrected text as follows: **RESERVATION OF RIGHTS BY UNITED STATES**
18. **Page 16, Paragraph 62.** Corrected text as follows: The **covenant** set forth in Sections XIII (**Covenant** by United States) **does** not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:
19. **Page 17, Section XVI Caption.** Corrected text as follows with corresponding change to the Table of Contents: **RESERVATION OF RIGHTS BY STATE**
20. **Page 17, Paragraph 65.** Corrected text as follows: The covenant set forth in Sections XIV (**Covenant** by the State) does not pertain to any matters other than those expressly identified therein. The State reserves, and this Settlement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:
21. **Page 18, Section XVII Caption.** Corrected text as follows with corresponding change to the Table of Contents: **COVENANT BY PURCHASER**
22. **Page 18, Paragraph 67.** Corrected text as follows: Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, its contractors or employees, or the State with respect to Existing Contamination, the response costs paid pursuant to **Section V (Payment of Response Costs)** or this Settlement, including, but not limited to:
 -
 - c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law related to the Site, or any claims arising out of response activities at the Site, Existing Contamination, the response costs paid pursuant to **Section V (Payment of Response Costs)** and this Settlement.
23. **Page 18, Paragraph 68.** Corrected text as follows: **This covenant** not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XV (**Reservation** of Rights by United States) or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVI (**Reservation** of Rights by the State), other than in Paragraphs 62.a and 65.a (liability for failure to meet a requirement of the Settlement), 62.b and 65.b (criminal liability), or 62.c and 65.c. (violations of federal/state law during Purchaser's ownership of the Property), but only to the extent that Purchasers' claims arise from the same response

action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

24. **Page 19, Paragraph 70.** Corrected text as follows: Except as expressly provided in Section XIII (**Covenant** by United States), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Purchaser or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.
25. **Page 19, Paragraph 72.** Corrected text as follows: Nothing in this Settlement creates any rights in, or grants any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (**Covenant** by Purchaser), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party 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 herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).
26. **Page 19, Paragraph 73:** The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are Existing Contamination, the response costs paid pursuant to **Section V (Payment of Response Costs)**, and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States, the State, or any other person. However, if the United States exercises rights under the reservations in Section XV (**Reservation** of Rights by United States) or the State exercises rights under the reservations in Section XVI (**Reservation** of Rights by the State), other than in Paragraphs 62.a and 65.a (liability for failure by Purchaser to meet a requirement of this Settlement), 62.b. and 62.b (criminal liability), or 62.c and 65.c. (liability for violations of federal law that occur during Purchaser’s ownership of the Property), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

#####

From: [Chalfant, Mark](#)
To: [Wilkerson, Jessica](#)
Subject: RE: For Your Review: Lockwood Solvent PPA Update & Corrections
Date: Monday, October 26, 2020 7:14:00 AM

Thank you, Jessica. Mark

Mark A.R. Chalfant
Office of Regional Counsel | U.S. EPA Region 8
1595 Wynkoop Street, Denver, CO 80202 (Mail Stop: 8ORC-C)
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Wilkerson, Jessica <Jessica.Wilkerson@mt.gov>
Sent: Thursday, October 22, 2020 4:40 PM
To: Chalfant, Mark <Chalfant.Mark@epa.gov>; Hunt, Christopher <chunt@kwgd.com>
Cc: Caldwell, Jackie <jcaldwell@kwgd.com>
Subject: RE: For Your Review: Lockwood Solvent PPA Update & Corrections

Good afternoon,

DEQ has reviewed the errata sheet and final PPA document and confirms that the signature page submitted by DEQ remains valid.

Best,
Jessica

From: Chalfant, Mark <Chalfant.Mark@epa.gov>
Sent: Thursday, October 22, 2020 2:38 PM
To: Hunt, Christopher <chunt@kwgd.com>
Cc: Caldwell, Jackie <jcaldwell@kwgd.com>; Wilkerson, Jessica <Jessica.Wilkerson@mt.gov>
Subject: [EXTERNAL] RE: For Your Review: Lockwood Solvent PPA Update & Corrections

Thank you, Christopher, for confirming. I'll be in touch. Mark

Mark A.R. Chalfant
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From: Hunt, Christopher <chunt@kwgd.com>
Sent: Thursday, October 22, 2020 2:26 PM

To: Chalfant, Mark <Chalfant.Mark@epa.gov>

Cc: Caldwell, Jackie <jcaldwell@kwgd.com>; Wilkerson, Jessica <Jessica.wilkerson@mt.gov>

Subject: Re: For Your Review: Lockwood Solvent PPA Update & Corrections

Approved. We have reviewed the corrections and the signature pages of MAC et al. remain valid.

Sent from my iPhone

On Oct 22, 2020, at 4:17 PM, Chalfant, Mark <Chalfant.Mark@epa.gov> wrote:

Christopher, Jackie and Jessica:

I wanted to update you on the proposed Lockwood Solvent PPA. I am pleased to inform you that the Department of Justice's Deputy Section Chief signed the PPA last night so we now have completed the signature gathering process.

As I previously mentioned, the Department of Justice reviewers noted a number of non-substantive corrections which need to be made to the PPA prior to the Federal Register notice being published. Attached please find an errata sheet which lists the corrections along with a revised copy of the PPA which reflects these changes. I have highlighted language changes in **bold** and with underlining to facilitate your review. The majority of the corrections involve changing references to covenants and reservations of rights from the plural to the singular. I believe the only correction that may not be self-explanatory is striking the reference to CERCLA on page 1. The Department of Justice and EPA wish to make this change because the main body of the document memorializes the federal and state CERCLA covenants and reservations of rights and is not necessary to reference the statute on the caption page. In terms of next steps, EPA initiated the process for publishing the Federal Register notice last Monday, October 19th.

I would appreciate it if you would email me a brief statement that you have reviewed the changes listed on the errata sheet and that your client's signature page remains valid. Please do not hesitate to contact me if you have any questions about the corrections or any other matters. I will keep you posted on the status of the Federal Register notice.

Thank you.

Mark

Mark A.R. Chalfant

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