

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
READING CLERK

IN THE MATTER OF:
Lockwood Solvent Ground Water Plume
Superfund Site
Billings, Yellowstone County, Montana

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL DESIGN

Soco West, Inc.

U.S. EPA Region 8
CERCLA Docket No. **CERCLA-08-2011-0014**

Respondent

Proceeding under Sections 104, 106, 107,
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act of 1980, as amended, 42
U.S.C. §§ 9604, 9606, 9607, and 9622.

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMEDIAL DESIGN**

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I. JURISDICTION AND GENERAL PROVISIONS

1. The parties have agreed to the terms of a Remedial Design/Remedial Action Consent Decree (RD/RA CD) and Scope of Work (SOW) for Operable Unit 2 (OU 2) of the Lockwood Ground Water Plume Superfund Site (Site). This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is not meant to alter the parties' agreements contained in the RD/RA CD and the SOW. The purpose of this Settlement Agreement is to authorize Soco West, Inc. (Respondent) to commence Remedial Design activities in accordance with the SOW during the period between lodging of the RD/RA CD with the United State District Court and the Court's approval and entry of the RD/RA CD. The parties intend that this Settlement Agreement shall automatically terminate when the Court approves and enters the RD/RA CD. Thereafter, Respondent shall comply with the RD/RA CD. If the RD/RA CD is not approved and entered by the Court within six months of the effective date of this Settlement Agreement, this Settlement Agreement shall automatically terminate in accordance with Paragraph 77.
2. The State of Montana is a party to the RD/RA CD, but not to this Settlement Agreement. State covenants and reservations are contained in the RD/RA CD. State roles and responsibilities with respect to this Settlement Agreement are as set forth in the RD/RA CD, and, as between the State of Montana Department of Environmental Quality (MDEQ) and the United States Environmental Protection Agency (EPA), the Site-Specific Enforcement Agreement for the Site.
3. The Settlement Agreement is entered into voluntarily by EPA and Respondent. This Settlement Agreement provides that Respondent shall undertake a Remedial Design (RD), including various procedures and technical analyses, to produce a detailed set of plans and specifications for implementation of the Remedial Action selected the Record of Decision (ROD) signed by both EPA and the State on August 16, 2005. The Site encompasses approximately 580 acres, is located on the outskirts of Billings, Montana in Yellowstone County, Montana, and depicted generally on the map attached as Attachment 2.
4. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9604, 9606, 9607, and 9622. This authority was delegated to the EPA Administrator by Executive Order 12580 (52 *Fed. Reg.* 2923, Jan. 29, 1987) and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-C, and re-delegated the authority to other Regional officials.
5. On August 12, 2011, the United States of America (United States), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607, with the United States District Court for the District of Montana, Billings Division (Court).
6. On August 18, 2011, the United States, on behalf of the Administrator of EPA, lodged a RD/RA CD, pursuant to 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), in the

Soco West, Inc. (Soco West) matter with the Court, which is attached to this Settlement Agreement as Attachment 1, and incorporated herein.

7. The remainder of the Jurisdiction and General Provisions are set forth in Sections I. and II. of the RD/RA CD.

II. PARTIES BOUND

8. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement. The signatories to this Settlement Agreement certify that they are authorized to execute and legally bind the parties they represent.

9. Respondent is liable for carrying out all activities required by this Settlement Agreement, the RD/RA CD and the Statement of Work (SOW), which is incorporated herein.

10. Respondent shall comply with the terms of the RD/RA CD and the SOW.

III. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms are used in this Settlement Agreement, in the documents attached to this Settlement Agreement, or incorporated by reference into this Settlement Agreement, the definitions, as set forth in Section IV. of the RD/RA CD, are incorporated herein, and shall apply. The following definitions shall apply only to this Settlement Agreement, and shall override any conflicts in the definitions contained in the RD/RA CD:

a. "Settlement Agreement" shall mean this Administrative Order Settlement Agreement and Order on Consent and all Attachments attached hereto. In the event of conflict between this Settlement Agreement and any Attachment, refer to Section XXVII. (Integration/Attachments) to determine the controlling Section or document.

b. "Effective Date" shall be the date when the Settlement Agreement is signed by the Regional Administrator or his/her designee, and after the United States lodges the RD/RA CD with the Court.

c. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIII. (Record Retention).

IV. FINDINGS OF FACT

12. The Site spans approximately 580 acres. For purposes of investigation and remediation, EPA and MDEQ divided it into two Operable Units. Operable Unit 1 (OU 1) consists of a manufacturing facility operated by Beall Trailers, Inc., which is not a subject of this Settlement Agreement.
13. From approximately 1972 to 2005, Brenntag West, Inc., and its predecessor, Dyce Chemical, operated a chemical re-packaging and distribution company on what is now Operable Unit 2 (OU 2). In or around 2005, Soco West succeeded to the ownership of OU 2.
14. Among other contaminants, tetrachloroethene (PCE) and trichloroethene (TCE) have been found in soils and groundwater at OU 2.
15. In October 1986, Lockwood Water and Sewer District personnel discovered benzene and chlorinated solvents in water supply wells near the Site. This triggered investigations by DEQ in an attempt to ascertain source areas of this contamination.
16. In the summer of 2002, EPA initiated a Removal Action in response to groundwater contamination in the vicinity of the Site. EPA extended the public water supply line to the Lomond Lane area near the Site to connect 14 residences whose drinking water wells exhibited elevated levels of contaminants.
17. EPA placed the Site on the CERCLA National Priorities List on December 1, 2000.
18. In addition to PCE and TCE, the contaminants of concern at the Site also include dichloroethene, vinyl chloride, and carbon tetrachloride. According to the most recent groundwater sampling data, a contaminated groundwater plume extends from OU 1 on the south end of the Site, to Brickyard Road and Klenck Lane to the east, and under OU 2 to the Yellowstone River to the north and west.
19. In 2003, EPA and MDEQ completed a Remedial Investigation and Feasibility Study for the Site. In August 2005, EPA issued a Record of Decision (ROD) for the Site. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, EPA determined that actual or threatened releases of hazardous substances from the Site, if not addressed, may present an imminent and substantial endangerment to the public, health, welfare, or environment.
20. The remedy selected in the ROD for OU 2 included, among other things, excavation and treatment of accessible contaminated soil, construction of a soil vapor extraction system and in-situ chemical oxidation to treat inaccessible contaminated soil, and bioremediation to treat contaminated groundwater.
21. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part: In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility,

he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

22. By Executive Order 12850 dated January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, as well as the Administrative Record supporting this Order, EPA has determined that:

23. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Substances found in the soils and groundwater at the Site, such as those substances identified in Section IV. above, are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. The "hazardous substances" found at the Site were "released" or threatened to be "released" into the "environment" within the meaning of Sections 101(14), 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), and 9601(8), respectively, and these hazardous substances were disposed of at the Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

26. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. EPA determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of release or threatened releases of hazardous substances from the Site.

28. EPA issued its preferred remedy for the Site in the ROD.

29. The Respondent has agreed to be responsible for the injunctive relief to which EPA is entitled at the Site under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), including, but not limited to, such relief as may be necessary to abate the imminent and substantial endangerment to the public health or welfare or the environment caused by the release or threatened release of hazardous substances from the Site.

30. Hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, PCE and TCE, were disposed of at the Site.

31. The hazardous substances found at the Site in soil and groundwater, including, but not limited to PCE and TCE, were released, or there is a threat of their release, into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. To protect the public health, welfare and the environment from the actual or threatened release of a hazardous substance into the environment from the Site, the Administrator of EPA, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has undertaken response activities with respect to the Site which are not inconsistent with the NCP, including, among other things, extending a public water supply line on Lomond Lane to connect 14 residences.

33. The Respondent is a responsible party under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as an owner of the Site.

VI. ORDER

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

VII. DESIGNATED PROJECT MANAGER AND COORDINATORS

35. The roles and responsibilities of Respondent, EPA, and the Montana Department of Environmental Quality (DEQ) are set forth in Section VI. of the RD/RA CD.

VIII. WORK TO BE PERFORMED

36. Respondent shall perform all actions necessary to implement the Remedial Design Activities and the Statement of Work, as set forth in the RD/RA CD and SOW, and EPA and MDEQ will respond pursuant to Section VI. of the RD/RA CD.

37. Respondent shall conduct all work in accordance with the RD/RA CD, SOW, the ROD(s), CERCLA, the NCP, and all applicable EPA guidance. The Project Coordinator shall use his or her best efforts to inform Respondent if new or revised guidances may apply to the Work.

38. EPA will provide approval of Remedial Design activities, as set forth in the RD/RA CD.

39. Community Relations Plan: Respondent shall comply with Section XXXI. of the RD/RA CD.

40. Emergency Response and Notification of Releases: Respondent shall comply with Section XV. of the RD/RA CD, and EPA and MDEQ will respond pursuant to RD/RA CD.

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

41. EPA and MDEQ will approve, concur or consult upon (as indicated) any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, as set forth in the RD/RA CD. Respondent shall comply with all requirements of Section IX. of the RD/RA.CD.

42. Resubmission: Respondent shall comply with Resubmission of Plans, as set forth in Paragraph 39. Section XI. of the RD/RA CD.

X. PROGRESS REPORTS

43. Reporting: Respondent shall submit all reports required by Section X. of the RD/RA CD.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

44. The roles and responsibilities of Respondent, EPA, and the DEQ are set forth in Section IX. of the RD/RA CD. Respondent shall comply with all requirements of Section IX. of the RD/RA.CD.

XII. ACCESS TO INFORMATION

45. Respondent shall comply with Section XXV. of the RD/RA CD.

XIII. RECORD RETENTION

46. Respondent shall comply with Section XXVI. of the RD/RA CD.

XIV. COMPLIANCE WITH OTHER LAWS

47. Respondent shall undertake all action that this Settlement Agreement requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Settlement Agreement. The activities conducted pursuant to this Settlement Agreement, if approved by EPA, shall be considered consistent with the NCP.

48. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

49. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVI. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Settlement Agreement. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of the Respondent that have not been disputed in accordance with this Section.

51. Any dispute which arises under or with respect to this Settlement Agreement shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

52. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Respondent invokes the formal dispute resolution procedures of this Section by serving on EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. The Statement of Position shall specify Respondent's position as to whether formal dispute resolution should proceed under Paragraphs 53. or 54.

b. Within 30 days after receipt of Respondent's Statement of Position, EPA, after consultation with MDEQ, will serve on Respondent its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraphs 53. or 54. Within 20 days after receipt of EPA's Statement of Position, Respondent may submit a Reply.

c. If there is disagreement between EPA and Respondent as to whether dispute resolution should proceed under Paragraphs 53. or 54., the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable.

53. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA and MDEQ under this Settlement Agreement and its appendices; and (2) the adequacy of the performance of response actions taken pursuant to this Settlement Agreement and its appendices. Nothing in this Settlement Agreement shall be construed to allow any dispute by Respondent regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8 (ARA EPR), will issue a final administrative decision resolving a dispute based on the administrative record described in Paragraph 53.a. for matters regarding the adequacy of any response actions taken pursuant to this Settlement Agreement and related matters. The Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8 (ARA ECEJ), will issue a final administrative decision resolving a dispute based on the administrative record described in Paragraph 53.a. for issues regarding costs, billings, and related matters. These final decisions shall be binding upon Respondent.

54. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of Respondent's Statement of Position submitted pursuant to Paragraph 52., the ARA EPR will issue a final decision resolving a dispute regarding technical issues; and the ARA ECEJ will issue a final decision resolving a dispute regarding costs, billings, financial assurance and related matters. This final decision shall be binding on Respondent.

55. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Respondent under this Settlement Agreement, not directly in dispute, unless EPA agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 79.a. of the RD/RA CD. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX of the RD/RA CD (Stipulated Penalties).

XVII. FORCE MAJEURE

56. Respondent shall comply with Section XVIII. of the RD/RA CD, and EPA and MDEQ shall respond pursuant to Section XVIII. of the RD/RA CD.

XVIII. STIPULATED PENALTIES

57. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Section XX. of the RD/RA CD for failure to comply with the requirements of the Settlement Agreement and the RD/RA CD, and EPA and MDEQ shall respond pursuant to Section XX. of the RD/RA CD.

XIX. COVENANT NOT TO SUE BY EPA

58. In consideration of the actions that Respondent will perform under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Settlement Agreement. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for performance of response actions other than the Work;
- c. criminal liability;
- 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 arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and
- f. liability for costs incurred, or to be incurred, by the Agency for Toxic Substances and Disease Registry related to the Site.

61. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, or the other conditions set forth in Section XXI. of the RD/RA CD, EPA may assume the Work, pursuant to Section XXI. of the RD/RA CD.

XXI. COVENANT NOT TO SUE BY RESPONDENT

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

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

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

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

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

64. 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).

XXII. OTHER CLAIMS

65. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or their directors, officers, employees, agents, successors, representatives,

assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

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

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

XXIII. CONTRIBUTION PROTECTION

68. a. 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 Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement is the Work.

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

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

69. The indemnification provisions, as set forth in Section XVII. of the RD/RA CD are incorporated herein.

XXV. INSURANCE

70. The insurance provisions, as set forth in Section XVII. of the RD/RA CD are incorporated herein.

XXVII. INTEGRATION/ATTACHMENTS

71. This Settlement Agreement and its Attachments and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), that will be developed pursuant to this Settlement Agreement and become incorporated into, and enforceable under, this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

72. In the event of a conflict between any provision of this Settlement Agreement and the provisions of any document attached to this Settlement Agreement or submitted or approved pursuant to this Settlement Agreement, with the exception of Section II. (Definitions); Section XIX. (Covenant Not to Sue By EPA); Section XX. (Reservation of Rights by EPA); Section XXI. (Covenant Not to Sue By Respondent); XXII. (Other Claims); XXIII. (Contribution Protection); XXVII. (Integration/Attachments); Section XXX. (Effective Date and Subsequent Modification); and XXXI. (Notice of Completion of Settlement Agreement), the provisions of the RD/RA CD shall control.

73. The following documents are attached to and incorporated into this Settlement Agreement:

“Attachment 1” is RD/RA CD (including its appendices)

“Attachment 2” is the map of the Site.

XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

74. This Settlement Agreement shall be effective when it is signed by the Regional Administrator or his/her designee, and after the United States lodges the RD/RA CD with the Court.

75. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

76. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of their obligation to obtain any

formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXXI. NOTICE OF COMPLETION OF SETTLEMENT AGREEMENT

77. This Settlement Agreement shall automatically terminate within six (6) months of the effective date of this Settlement Agreement or when the Court approves and enters the RD/RA CD, whichever occurs first. Termination of this Settlement Agreement shall not in any way alter the provisions of the RD/RA CD, nor shall it imply approval of any Work performed but not approved by EPA.

78. After the Court approves and enters the RD/RA CD, Respondent shall comply with the RD/RA CD.

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

Agreed this 22^d day of August, 2011.

SOCO WEST, INC.

By: [Signature]

Date: 8/9/11

Name: RAS MEHTA

Title: Pres

It is so ORDERED and Agreed this 23 day of August, 2011

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: Julie DalSoglio Date: 8/23/11
Julie DalSoglio, Director
Montana Office

By: Kelcey Land Date: 8/24/11
Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice