UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF: East Helena Residential Soils Site East Helena, Lewis & Clark County, Montana, American Chemet Corporation, Respondent. Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9606(a).	U.S. EPA Region 8 CERCLA Docket No. **CERCLA-08-2015-0004** ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL RESPONSE ACTIVITIES

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and American Chemet Corporation ("Respondent"). This Agreement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the "East Helena Superfund Site" (the "Site") generally located at 145 State Highway 282, East Helena, 59635, Lewis & Clark County, Montana.

2. This Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Montana (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Agreement. Respondent agrees to comply with and be bound by the terms of this Agreement and further agrees that it will not contest the basis or validity of this Agreement or its terms.

II. PARTIES BOUND

5. This Agreement applies to and is binding upon EPA and upon the Respondent and its successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Agreement and comply with this Agreement. Respondent shall be responsible for any noncompliance with this Agreement by itself and its contractors, subcontractors and representatives.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Agreement, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Agreement" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Agreement and any appendix, this Agreement shall control.

"American Chemet Property" shall mean property at the Site that is owned, leased or otherwise controlled by the American Chemet Corporation, including real property, equipment, and facilities at or adjacent to 145 State Highway 282, East Helena, 59635, Lewis & Clark County, Montana, as generally depicted in the map in Appendix A.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

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

"East Helena Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by the EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Effective Date" shall be the effective date of this Agreement as provided in Section XXXI.

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

"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.

"MDEQ" shall mean the Montana Department of Environmental Quality and any successor departments or agencies of the State.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

"Parties" shall mean the EPA and the Respondent.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean American Chemet Corporation, a Montana Corporation holding Montana Secretary of State Identification No.: D030024, and whose registered agent is Brad Smith, 145 Highway 282, P. O. Box 1160, East Helena, Montana 59635-0000.

"Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables pursuant to this Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XV (including, but not limited to, costs and attorneys' fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), and Section XV (Emergency Response & Notification of Releases), and Paragraph 82 (Work Takeover).

"ROD" or "2009 ROD" shall mean the EPA "Final Record of Decision for the East Helena Superfund Site, Operable Unit No. 2, Residential Soils and Undeveloped Lands," signed on September 17, 2009, by the Regional Administrator, EPA Region 8.

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

"Site" shall mean the East Helena Superfund Site, EPA I.D. No. 0830, placed on the EPA National Priorities List in September, 1984, encompassing the Town of East Helena, including the American Chemet Property, the former ASARCo lead and zinc smelter facility, and certain undeveloped lands around the Town of East Helena, in Lewis & Clark County, Montana, and depicted generally on the map attached as Appendix B.

"State" shall mean the State of Montana.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including the 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); (c) any "solid waste" under section 1004(27) of the Resource Conservation Recovery Act (RCRA), 42 U.S.C. § 6903(27); and (d) any "hazardous substance" or "deleterious substance" under the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-705 through 729, MCA.

"Work" shall mean all activities Respondent is required to perform under this Agreement except those required by Section XIII (Retention of Records).

IV. FINDINGS OF FACT

8. The Site, located in Lewis & Clark County, Montana, includes the former ASARCo lead smelter facility, the City of East Helena, nearby residential subdivisions, certain rural developments such as farms and homes, railroad right-of-way areas as well as the American Chemet Property and certain surrounding areas and undeveloped lands.

9. The ASARCo lead smelter operated for approximately 100 years and, in addition to smelting lead, was used to recover zinc during much of its existence.

10. On April 14, 1986, a remedial investigation found that soil an area approximately eight-tenths of a square mile around the smelter facility was phytotoxic due to arsenic

contamination, and an area approximately four-tenths of a square mile around the smelter facility was phytotoxic due to lead and zinc contamination, causing reduced vegetation.

11. In November 1989, EPA issued the first of two records of decision for the Site selecting a response action under CERCLA to address sources of contamination at the process ponds of the smelter facility and concluded that releases of hazardous substances from the Site may pose an imminent and substantial endangerment to human health and the environment.

12. On July 19, 1991, the EPA issued an Action Memorandum for a non-time-critical removal action to address actual or potential exposure to nearby human populations, animals, or the food chain, from hazardous substances or pollutants or contaminants at properties where surface soil had lead concentrations of 1,000 mg/kg or greater. That Action Memorandum found that the release of hazardous substances at the Site, if not addressed, posed an imminent and substantial risk to the public health, welfare, or the environment.

13. In July, 1995, in its Human Health Risk Assessment for Residential Soil, EPA identified lead, arsenic and cadmium as chemicals of concern that were released into the environment at the Site.

14. The Respondent is an active corporation registered and doing business in the State of Montana.

15. The Respondent owns or leases real property and equipment within the Site, adjacent to the smelter facility, including the American Chemet Property.

16. The Respondent began producing zinc-based paint pigments in 1947 and continues to operate, but has modified and upgraded its zinc and copper products lines at various times.

17. Hazardous substances have been released or are threatened to be released at the Site.

18. On May 5, 1998, the EPA entered into a consent decree with ASARCo addressing the United States' claims at the Site under the RCRA, and addressing contamination at ASARCo's former smelter facility.

19. In 2009, as part of the resolution of an ASARCo bankruptcy, the Montana Environmental Custodial Trust (Trust) was created. The Trust is managed by the Montana Environmental Trust Group, LLC. The Trust administers the Montana properties formerly owned by ASARCo, including that portion of the Site referred to as the East Fields.

20. In 2009, EPA issued its second Record of Decision, the "Final Record of Decision for the East Helena Superfund Site, Operable Unit No. 2, Residential Soils and Undeveloped Lands," which selected response actions for that portion of the Site not included in EPA's November, 1989, Record of Decision.

21. The East Fields is an area of land directly east of the smelter and west of the Montana City Highway (State Highway 518), and comprises approximately 160 acres.

22. On or about August 5, 2014, Respondent excavated approximately 3,500 cubic yards of soil from the American Chemet Property and deposited it in the East Fields.

23. Preliminary sampling of the soil excavated by Respondent and deposited in the East Fields showed elevated concentrations of lead in excess of 1,482 mg/kg, the remedial action level established in the 2009 ROD for lead in soil on commercial property.

24. Soils deposited by Respondent at East Fields remain uncovered, exposed, and constitute a release of hazardous substances into the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

25. Based on the Findings of Fact set forth above, and the Administrative Record supporting this action, EPA has determined that:

a. The East Fields is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contaminated soil disposed of by Respondent at the East Fields includes "hazardous substances" (lead) as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent arranged for disposal of hazardous substances at the Site and is therefore liable as an "arranger" under section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3)).

e. The conditions and circumstances described in the Findings of Fact, above, constitute an actual or threatened "release" of a hazardous substance from a facility as defined by section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

f. The actual or threatened release of hazardous substances and conditions present at the East Fields may constitute an imminent and substantial endangerment to public health, welfare or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a). These conditions include, but are not limited to:

(1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

(2) high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;

(3) weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and

g. Respondent is liable for performance of the Work and for Response Costs incurred and to be incurred by the United States at the Site.

VI. AGREEMENT AND ORDER

26. Based upon EPA's foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, and in order to resolve the dispute between the parties, and without admitting liability on behalf of Respondent, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Agreement, including, but not limited to, all appendices and attachments to this Agreement and all documents incorporated by reference into this Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND EPA PROJECT MANAGER

27. All work under this Agreement shall be under the direction and supervision of personnel qualified to conduct Superfund Removal Actions. The Contractor for the Work to be Performed shall be Tetra Tech, Inc., who shall be responsible for administration of the Work required by this Agreement. Tetra Tech, Inc. may be contacted as follows:

Katy Norris
Tetra Tech, Inc.
7 West Sixth Avenue, Suite 612
Helena, MT 59601
(406) 441-3268
Kathryn.Norris@ttemi.com

If, after the commencement of Work, Respondent retains additional contractors or subcontractors, Respondent shall notify EPA of the names and qualifications of such contractors or subcontractors retained to perform the Work at least ten (10) days prior to commencement of Work by such additional contractor or subcontractor. EPA retains the right at any time to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within fifteen (15) days after EPA's disapproval. Respondent shall demonstrate that any proposed contractor has a quality system that complies with ANSI/ASQ E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American Society for Quality 2004, or most recent version), by submitting to EPA a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

28. The Project Coordinator responsible for administration of the Work required by this Agreement shall be:

Daniel B. Brimhall, Vice President
American Chemet Corporation
P.O. Box 1160
East Helena, MT 59635
(406) 441-2011
dbrimhall@chemet.com

To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within twenty (20) days following EPA's disapproval. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Agreement, shall be directed to Respondent's Project Coordinator and EPA's Project Manager.

29. EPA has designated Betsy Burns of the EPA Region 8 Montana Operations Office, as EPA's Project Manager. Except as otherwise provided in this Agreement, Respondent shall direct all submissions required by this Agreement to the EPA Project Manager at:

Betsy Burns
U.S. Environmental Protection Agency
Federal Building, Mail Code: 8MO
10 West 15th St., Suite 3200
Helena, MT 59626
burns.betsy@epa.gov
406-457-5013

30. EPA's Project Manager shall be responsible for overseeing Respondent's implementation of this Agreement, and shall have the authority lawfully vested in an On Scene Coordinator by the NCP, 40 C.F.R. Part 300. EPA's Project Manager shall have the authority, consistent with the NCP, to halt any Work required by this Agreement, and to take or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. The absence of the EPA Project Manager shall not be the cause for the stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

31. Respondent shall perform, at a minimum, all actions necessary to implement the Work. The Work to be implemented shall include, but is not limited to, characterization and proper disposal of the excavated soils Respondent deposited at the East Fields.

a. Removal Action Work Plan.

(1) Within thirty (30) days after the Effective Date of this Agreement, Respondent shall submit a draft Removal Action Work Plan (Work Plan) for EPA approval. The Work Plan shall include a Sampling and Analysis Plan to adequately characterize the nature and extent of hazardous substance contamination in and adjacent to the excavated soils Respondent deposited at the East Fields, and any soils that have come into contact with soils deposited by Respondent at the East Fields. The draft Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Agreement. The Sampling and Analysis Plan shall include protocols for soil analysis for metals, volatiles and semi-volatiles.

(2) Respondent's Work Plan shall include a Materials Handling Plan that will describe actions to be taken to appropriately handle, treat or dispose of hazardous substance-contaminated soils, where concentrations of lead in those soils equal or exceed 1,482 mg/kg, or where other hazardous substance contamination in those soils exceeds EPA Site action levels determined by the 2009 ROD for commercial/industrial properties.

(3) Soils excavated by Respondent from the East Fields under this Agreement as part of the Work shall be handled and treated in a manner acceptable to EPA and/or disposed of in a repository licensed under and in compliance with RCRA subtitle D and constructed to receive CERCLA hazardous substances.

(4) Performance standards for the Work shall include all Applicable or Relevant and Appropriate Requirements (ARARs), cleanup goals, cleanup levels, cleanup standards, specifications and all measures for the performance of treatment processes, engineering controls and other controls set forth in the 2009 ROD and any deliverable created and approved under this Agreement.

b. Sampling and Analysis Plan. Respondent has submitted a Sampling and Analysis Plan to EPA for review and approval pursuant to Section IX (EPA Approval of Plans, Reports, and Other Deliverables). This plan consists of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that EPA will review to determine whether they are consistent with the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002); "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001, reissued May 2006); "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and the Representative Sampling Guidance for soil, air, ecology, waste, and water. Upon its approval by EPA pursuant to Section IX (EPA Approval of Plans, Reports, and Other Deliverables), the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Agreement.

c. Characterization. Within thirty (30) days following the approval of the Sampling and Analysis Plan by EPA, Respondent shall characterize the nature and extent of soils Respondent deposited at the East Fields consistent with the EPA-approved FSP and QAPP.

d. Site Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment a Site Health and Safety Plan that ensures the protection of on-Site workers and the public during performance of on-Site Work under this Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992, or subsequently issued guidance). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

e. Reporting. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Agreement monthly, beginning ten (10) days after EPA's approval of the Work Plan until termination of this Agreement, unless otherwise directed in writing by EPA's Project Manager. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

f. Final Report. Within twenty (20) days after completion of all Work required by this Agreement, with the exception of any continuing obligations required by this Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Agreement. EPA will review and approve the final report in accordance with Section XXIX (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

g. Off-Site Shipments.

(1) Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondent complies with EPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992).

(2) Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, Respondent provides notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Manager. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall also notify the state environmental official referenced above and the EPA Project Manager of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the notice after the award of the contract for the removal action and before the Waste Material is shipped.

IX. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

32. All plans, including the Work Plan, reports and other deliverables will be reviewed and approved by EPA. *Respondent shall not commence any Work until EPA has approved the Work Plan pursuant to this Section.* Respondent shall notify EPA at least forty-eight (48) hours prior to performing any Work on-Site pursuant to the EPA-approved Action Work Plan.

33. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Agreement, in a notice to Respondent EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the above. EPA also may modify the initial submission to cure deficiencies in the submission if EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work or previous submissions have been disapproved due to material defects.

34. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 33, above, Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA, and in accordance with the schedule approved by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 33 and the submission had a material defect, such defect may be considered a violation of this Agreement and may subject Respondent to penalties in accordance with Paragraphs 69, 70 and/or 71.

35. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within ten (10) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Respondent may be subject to penalties in accordance with Paragraphs 69, 70 and/or 71, if the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 33 and 34.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties under Section XX (Stipulated Penalties)for violations of this Agreement.

c. While awaiting EPA approval, approval on condition, or modification of deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedules set forth under this Agreement.

d. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

36. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA.

37. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed in violation of this Agreement for failure to submit such plan, report, or other deliverable timely and adequately. Respondent may be subject to penalties for such violation as provided Paragraphs 69, 70 and/or 71.

38. Any non-compliance with any EPA-approved plans, reports, specifications, schedules, or other deliverables shall be considered a violation of the requirements of this Agreement. Determinations of non-compliance shall be made by EPA. Approval of the Work Plan shall not limit EPA's authority under the terms of this Agreement to require Respondent to conduct activities consistent with this Agreement to accomplish the Work outlined in this Section.

39. All plans, including the Work Plan, the schedule, reports, and other deliverables submitted to EPA under this Agreement shall, upon approval or modification by EPA, be incorporated into and become fully enforceable under this Agreement. In the event EPA approves an original or modified complete or partial plan, report, or other deliverable submitted by Respondent to EPA under this Agreement, the approved original or modified portion so approved shall be incorporated into and enforceable under this Agreement.

40. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

41. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

42. Access to Laboratories.

a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Agreement perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating

Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)," and any amendments made thereto during the course of the implementation of this Agreement. However, upon approval by EPA, Respondent may use other appropriate analytical methods, as long as: (a) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (b) the analytical methods are at least as stringent as the methods listed above, and (c) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Agreement have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

b. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990, or subsequently issued guidance), as guidance for QA/QC and sampling.

c. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent with split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Agreement unless EPA agrees otherwise.

e. Notwithstanding any provision of this Agreement, the United States retains all of its information gathering and inspection authorities and rights, including

enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. ACCESS AND INSTITUTIONAL CONTROLS

43. If the Site or any other real property where access and/or land, water, or other resource use restrictions are needed, is owned or controlled by persons other than Respondent, then Respondent shall use its best efforts to secure from such persons:

a. Within thirty (30) days after the Effective Date, or as otherwise specified in writing by the EPA Project Manager, all necessary access agreements. Any such access agreement shall provide access for EPA and Respondent and their representatives and contractors for the purpose of conducting any activity related to this Agreement. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements.

b. For purposes of Paragraph 43.a, above, "best efforts" includes the payment of reasonable sums of money to obtain access. If, within thirty (30) days after the Effective Respondent has not obtained agreements to provide access, Respondent shall promptly notify EPA in writing, and shall include in that notification a summary of the steps that Respondent has taken to attempt to comply with Paragraph 43.a. EPA may then, as it deems appropriate, assist Respondent in obtaining access. EPA reserves the right to seek payment from Respondent for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access.

44. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION

45. Respondent shall provide to EPA, 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 Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, 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 regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

46. Privileged and Protected Claims.

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected under federal law, in lieu of providing EPA with the record,

provided Respondent complies with Sub-Paragraph b, below, and except as provided in Sub-Paragraph c, below.

b. If Respondent asserts a claim of privilege or protection, it shall provide EPA 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, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent 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 Respondent is required to create or generate pursuant to this Agreement.

47. Business Confidential Claims.

Respondent may assert that all or part of a Record provided to EPA under this Section or Section XIII (Retention of Records) is business confidential and/or trade secret information 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Agreement for which Respondent asserts business confidentiality claims. Records submitted to EPA and determined to be confidential by EPA 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, or if EPA has notified Respondent 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 Respondent.

48. Notwithstanding any provision of this Agreement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RETENTION OF RECORDS

49. During the pendency of this Agreement and for a minimum of ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the

liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

50. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 49, above, Respondent shall deliver any such Records to EPA.

51. Within twenty (20) days after the Effective Date, Respondent shall submit a written certification to EPA's Project Manager that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification by EPA of its potential liability by EPA regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. If Respondent is unable to so certify, it shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XIV. COMPLIANCE WITH OTHER LAWS

52. All activities undertaken by Respondent pursuant to this Agreement shall be performed in accordance with the requirements of all applicable federal and State laws and regulations. In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Agreement 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. Respondent shall identify ARARs in the Work Plan subject to EPA approval. As provided in Section 121(e) of CERCLA, 42 U.S.C § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-Site requires a federal or State permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

53. If any incident or change in Site or Property conditions occur during the performance of Work conducted pursuant to this Agreement that causes or threatens to cause a

release of hazardous substances from the Site or Property or an endangerment to the public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such a release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Manager of the incident or Site conditions at:

Betsy Burns
USEPA Region 8 - Montana Operations Office
Federal Building, Mail Code: 8MO
10 West 15th St., Suite 3200
Helena, MT 59626
406-457-5013.

54. Respondent shall also contact the EPA Regional Emergency Response Center at 303-293-1788, and the National Response Center at 800-424-8802.

55. For any event covered under this Section, Respondent shall submit a written report to EPA Project Manager within seven (7) days of the release or threat of release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Section 11001, *et seq.*

XVI. AUTHORITY OF EPA'S PROJECT MANAGER

56. The EPA Project Manager shall be responsible for overseeing Respondent's implementation of this Agreement. The EPA Project Manager shall have the authority vested in an On Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Agreement, or to direct any other removal action undertaken at the Site. The EPA Project Manager's absence from the Site shall not be cause for stoppage of work unless specifically directed by the EPA Project Manager.

XVII. PAYMENT OF RESPONSE COSTS

57. Respondent shall reimburse EPA, upon written demand, for all Response Costs incurred by the United States for overseeing Respondent's implementation of the requirements of this Agreement. EPA may submit to Respondent on a periodic basis a bill for all Response Costs incurred by the United States with respect to this Agreement. EPA's Financial Management System summary data or a Region 8 cost summary as certified by EPA, shall serve as the basis for payment demands.

58. Respondent shall, within thirty (30) days of receipt of the bill, remit a cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

59. Payments shall be designated as "Response Costs – East Helena Superfund Site" and shall reference the payor's name and address, the Site identification number (SSID 0830), and the docket number of this Agreement.

60. The total amount to be paid by Settling Defendant pursuant to Paragraph 57 shall be deposited by EPA in the East Helena Site 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 the EPA to the EPA Hazardous Substance Superfund.

61. Respondent shall simultaneously transmit a copy of the payment check to EPA's Montana Operations Office at:

David Sturn
U.S. Environmental Protection Agency
Federal Building
10 West 15th St., Suite 3200
Mail Code: 8MO
Helena, MT 59626

62. In the event that the payments for Response Costs are not made within sixty (60) days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Paragraphs 58 and 59.

XVIII. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. The Parties shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally.

64. If Respondent objects to any EPA action taken pursuant to this Agreement, including billings for Response Costs, it shall notify EPA in writing of its objection(s) within five (5) days of such action, unless the objection(s) has/have been resolved informally. The EPA and Respondent shall have twenty (20) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the discretion of the EPA.

65. Any dispute resolution agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. The EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Respondent's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XIX. FORCE MAJEURE

66. Respondent agrees to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any unforeseeable event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards or action levels.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by *force majeure*, Respondent shall notify the EPA's Project Coordinator orally within five (5) business days of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing 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; Respondent's rationale for attributing such delay to a *force majeure* event if it intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

68. If the EPA agrees that the delay or anticipated delay is attributable to *force majeure*, the time for performance of the obligations under this Agreement 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 Respondent in writing of its decision. If the EPA agrees that the delay is attributable to a *force majeure*, the EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure*.

XX. STIPULATED PENALTIES

69. Stipulated Penalty Amounts – Reports. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in this Section for failure to comply with the requirements of this Agreement, unless excused under Section XIX (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Agreement or any work plan or other plan approved under this Agreement in accordance with all applicable requirements of law, this Agreement, and any plans or other documents approved by EPA pursuant to this Agreement and within the specified time schedules established by and approved under this Agreement.

70. Stipulated Penalty Amounts – Work. The following stipulated penalties shall accrue per violation per day for noncompliance with Work identified in Paragraph 31.a, b, c, d, and g:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$5,000	31st day and beyond

71. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraph 31.e and f:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$2,000	31st day and beyond

72. In the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 82 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $50,000. This amount is a stipulated penalty and does not off-set any other penalty, nor does it affect EPA's ability to recover any other response costs incurred under this Agreement, except as may be expressly provided for in this Agreement.

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or

higher, under Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

74. Following EPA's determination that Respondent has failed to comply with a requirement of this Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. The EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

75. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVIII (Dispute Resolution). Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 0830, and the EPA docket number for this action.

76. At the time of payment, Respondent shall notify EPA Region 8 that payment has been made as provided in Paragraph 61, above.

77. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Agreement.

78. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

79. If Respondent fails to pay stipulated penalties when due, the EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to section 107(c)(3)

of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that the EPA shall not seek civil penalties pursuant to section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Agreement, or in the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 82 (Work Takeover). Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.

XXI. RESERVATIONS OF RIGHTS BY EPA

80. Except as specifically provided in this Agreement, nothing in this Agreement shall limit the power and authority of the 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, nothing in this Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this 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.

81. The covenant not to sue set forth in Section XXII, above, does not pertain to any matters other than those expressly identified therein. The EPA reserves, and this 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 Agreement;

b. liability for costs not included within the definition of Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

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

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

82. Work Takeover. In the event the EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an

endangerment to human health or the environment, the EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute the EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondent shall pay pursuant to Section XVII (Payment of Response Costs). Notwithstanding any other provision of this Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANT NOT TO SUE BY EPA

83. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Agreement, and except as otherwise specifically provided in this Agreement, the EPA covenants not to sue or to take administrative action against Respondent for the Work and Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Agreement, including, but not limited to, payment of Response Costs pursuant to Paragraph 57 (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XXIII. COVENANT NOT TO SUE BY RESPONDENT

84. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this 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 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, section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, or Response Costs.

85. Respondent's 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 XXI (Reservations of Rights by EPA), other than in Paragraph 81.a (claims for failure to meet a requirement of the Agreement) or 81.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

86. Nothing in this 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).

XXIV. OTHER CLAIMS

87. By issuing this Agreement, the United States does not assume any liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Neither the United States nor EPA shall be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Agreement.

88. Nothing in this Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent, or any person not a party to this 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 under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

89. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

90. No action or decision by EPA pursuant to this 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).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

91. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. 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 which 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 in this Agreement diminishes the right of the United States, pursuant to section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

92. The Parties agree that this Agreement constitutes an administrative settlement for purposes of sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), 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), or as may be otherwise provided by law, for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are the Work and Response Costs. The Parties further agree that this 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 and Response Costs.

93. Respondent shall, with respect to any suit or claim brought by it for matters related to this Agreement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Agreement, notify EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

94. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XXII.

95. Effective upon full execution of this Agreement, Respondent agrees that the time period after the date of its signature shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 92 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time after full execution of this Agreement. If the EPA gives notice to Respondent that it will not make this Agreement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by the EPA.

XXVI. INDEMNIFICATION

96. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States. The Respondent shall not be held out as a party to any contract entered into by or on behalf of the United States in carrying out activities pursuant to this Agreement. Neither the United States nor any such contractor shall be considered an agent of the Respondent.

97. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

98. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

99. At least seven (7) days prior to commencing any Work on-Site under this Agreement, Respondent or its contractors shall secure, and shall maintain for the duration of this Agreement, commercial general liability insurance with limits of one (1) million dollars, for any one occurrence, and automobile insurance with limits of one (1) million dollars, combined single limit, and two (2) million dollars aggregate, naming EPA and the Montana Environmental Trust Group, LLC, as an additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Agreement. Within the same time period, Respondent or its contractors shall provide EPA with certificates of such insurance. Respondent shall submit such certificate for each new insurance policy issued to it or its contractors which provides the above-described insurance coverage for liabilities arising out of the activities performed by or on behalf of Respondent pursuant to this Agreement. In addition, for the duration of the Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor.

XXVIII. MODIFICATIONS

100. EPA's Project Manager may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Manager's oral direction. Any other requirements of this Agreement may be modified in writing by mutual agreement of the parties.

101. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the

requested deviation until receiving oral or written approval from the EPA Project Manager pursuant to Paragraph 100.

102. No informal advice, guidance, suggestion, or comment by the EPA Project Manager or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

103. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Agreement, with the exception of any continuing obligations required by this Agreement, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan, if appropriate, in order to correct such deficiencies within ten (10) days after receipt of the EPA notice. The modified Work Plan shall include a schedule for correcting such deficiencies. Within ten (10) days after receipt of written approval of the modified Work Plan, Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Agreement.

XXX. INTEGRATION/APPENDICES

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

Appendix A: Image - American Chemet Property at 145 State Highway 282, East Helena, 59635, Lewis & Clark County, Montana.

Appendix B: Image - East Helena Superfund Site, EPA I.D. No. 0830.

XXXI. EFFECTIVE DATE

105. This Agreement shall be effective once the Agreement is signed by both the Regional Administrator or his delegatee and the authorized representative of the Respondent.

106. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to this document.

Agreed this 21st day of May, 2015.

For Respondent American Chemet Corporation

By _____

Daniel B. Brimhall, Vice President
American Chemet Corporation

It is so ORDERED and Agreed this 21st day of May, 2015.

By: _____

Julie A. DalSoglio
Director, Montana Operations
U.S. Environmental Protection Agency, Region 8

By: Kelcey Land

Kelcey Land
Director, RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8

By: Andrea Madigan

Andrea Madigan
Acting Director, Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8

XXXI. EFFECTIVE DATE

105. This Agreement shall be effective once the Agreement is signed by both the Regional Administrator or his delegatee and the authorized representative of the Respondent.

106. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to this document.

Agreed this 21st day of May 2015.

For Respondent American Chemet Corporation

By _____

Daniel B. Brimhall, Vice President
American Chemet Corporation

It is so ORDERED and Agreed this 21st day of May, 2015.

By: Julie A. DalSoglio

Julie A. DalSoglio
Director, Montana Operations
U.S. Environmental Protection Agency, Region 8

By: _____

Kelcey Land
Director, RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8

By: _____

Andrea Madigan
Acting Director, Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8

XXXI. EFFECTIVE DATE

105. This Agreement shall be effective once the Agreement is signed by both the Regional Administrator or his delegatee and the authorized representative of the Respondent.

106. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to this document.

Agreed this 15th day of APRIL, 2015.

For Respondent American Chemet Corporation

By _____
Daniel B. Brimhall, Vice President
American Chemet Corporation

It is so ORDERED and Agreed this _____ day of _____, 2015.

By: _____

Julie A. DalSoglio
Director, Montana Operations
U.S. Environmental Protection Agency, Region 8

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER ON CONSENT** were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following on May 21, 2015 as indicated below:

To

Daniel B. Brimhall, Vice President
145 Highway 282
East Helena, MT 59635
By CERTIFIED MAIL # 7008 3230 0003 0726 1198

Date: May 21, 2015

By: Dayle Aldinger
Dayle Aldinger