

2016 SEP -7 PM 2: 45

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Empire State Oil Co – Refinery Site)
Thermopolis, Hot Springs County, Wyoming)

Sinclair Casper Refining Company)
SETTLING PARTY)

U.S. EPA Region 8
CERCLA Docket No. **CERCLA-08-2016-0006**

PROCEEDING UNDER
SECTION 122(h)(1) OF CERCLA
42 U.S.C. § 9622(h)(1)

SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the supervisors in the Legal Enforcement Program and Technical Enforcement Program in the Office of Enforcement Compliance and Environmental Justice by Regional Delegation R8.1200 and R8.ECEJ.1200.

2. This Settlement Agreement is made and entered into by EPA and the Sinclair Casper Refining Company ("Settling Party"). Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Empire State Oil Co – Refinery Site ("Site") in Thermopolis, Wyoming. The Site was formerly used as an oil refinery and encompasses approximately 30 acres, located at 242 Amoretti Street in Thermopolis.

4. The Site operated as an oil refinery from 1920 until 1969. From 1970 to 1974, the Site was inactive and no oil refining operations were conducted. EPA alleges that beginning in 1974, the oil refinery was razed and refinery equipment at the Site was sold and removed from the Site by various entities, including Settling Party.

5. EPA also alleges that on October 31, 1972, the refinery property was deeded to the William H. and Carrie Gottsche Foundation by way of a gift deed. EPA alleges Little America Refining Company ("Little America") purchased refinery equipment located at the Site on February 22, 1974 from the Gottsche Foundation.

6. EPA further alleges Little America contracted with Salt Creek Welding to conduct removal and demolition activities at the Site between August 1975 and October 1975. EPA alleges that during such activities a significant amount of asbestos contaminated pipe insulation was stripped from the equipment and disposed of on the ground at the Site.

7. EPA conducted a removal assessment at the Site in 2011 including an asbestos survey. Samples were taken and analyzed. The majority of samples were positively identified as containing asbestos in levels that posed a threat to human health and the environment.

8. Asbestos is designated as a hazardous substance. 40 C.F.R. § 302.4(a).

9. The Settling Party is the corporate successor to Little America.

10. In response to the release or threatened release of hazardous substances at the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

11. In performing these response actions, EPA has incurred response costs at or in connection with the Site.

12. EPA alleges that Settling Party is responsible pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs incurred at or in connection with the Site.

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

III. PARTIES BOUND

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

IV. DEFINITIONS

15. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

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

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

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

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

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

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest

is subject to change on October 1 of each year. Rates are available online at <http://www2.epa.gov/superfund/superfund-interest-rates>.

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

“Parties” shall mean EPA and Settling Party.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date of this Settlement Agreement, plus accrued Interest on all such costs through such date for the removal action. The “removal action” is described in the Pollution Report - Final for the Site dated January 9, 2014.

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

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean Sinclair Casper Refining Company, a Wyoming Corporation.

“Site” shall mean the Empire State Oil Co – Refinery Superfund Site, encompassing approximately 30 acres, located at 242 Amoretti Street in Thermopolis, Hot Springs County, Wyoming and generally shown on the map included in Appendix A.

“State” shall mean the State of Wyoming.

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

V. PAYMENT OF RESPONSE COSTS

16. Payment by Settling Party for Past Response Costs. Within 30 days after the Effective Date, Settling Party shall pay to EPA \$655,000.00.

17. Settling Party shall make payment to EPA using one of the following methods below:

Regular Mail:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, etc.:
U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account Number: 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

Such payment shall reference Site/Spill ID Number 08D5 and the EPA docket number for this action.

18. Deposit of Payment. The total amount to be paid by Settling Party pursuant to Paragraph 16 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

19. Notice of Payment. At the time of payment, Settling Party shall send notice that payment has been made to EPA at:

Joseph Poetter
Director, Financial Management Unit (FMS-F)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

In addition, Settling Party shall also send notice to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

EPA CFC by email: acctsreceivable.cinwd@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Both notices to EPA shall reference Site/Spill ID Number 08D5 and the EPA docket number for this action.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

20. Interest on Late Payments. If Settling Party fails to make the payment required by Paragraph 16 (Payment by Settling Party for Past Response Costs) by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

21. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 16 (Payment by Settling Party for Past Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 20 (Interest on Late Payments), \$2,500.00 per day for each day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Settling Party shall identify all payments to EPA under this Paragraph as "stipulated penalties," shall reference Site/Spill ID Number 08D5 and the EPA docket number for this action, and shall make payment 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
Beneficiary: US Environmental Protection Agency

Settling Party shall identify all payments to EPA under this Paragraph as "stipulated penalties" and shall make payment by official bank check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number 08D5, and the EPA docket number of this action and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. At the time of payment, Settling Party shall send notice that payment has been made as provided in Paragraph 19 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be

paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

23. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

24. Covenants for Settling Party by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. This covenant extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

25. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 24 (Covenants for Settling Party by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and

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

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

IX. COVENANTS BY SETTLING PARTY

27. Covenants by Settling Party. Settling Party 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 Past Response Costs and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund 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 claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Wyoming, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

28. 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).

29. Waiver of Claims by Settling Party.

a. Settling Party agrees not to assert the following claim and to waive the following claim or cause of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) Ability to Pay Waiver. For response costs relating to the Site against any person that has entered or in the future enters into a final settlement based on limited ability to pay with EPA with respect to the Site.

b. Exceptions to Waivers.

(1) The waivers under this Paragraph 29 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Settling Party.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

30. Except as provided in Paragraph 29 (Waiver of Claims by Settling Party), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Party), Settling Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

31. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and 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, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs.

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

33. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 60 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 30 days after service or receipt of any Motion for Summary Judgment and within 30 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

34. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of future response costs, or other relief relating to the Site not covered by this Settlement Agreement, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised 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 Covenants by EPA set forth in Section VII.

XI. RETENTION OF RECORDS

35. Until 10 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records,

reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to liability under CERCLA with respect to the Site. The above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

36. After the conclusion of the 10-year record retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 37 (Privileged and Protected Claims), Settling Party shall deliver any such Records to EPA.

37. Privileged and Protected Claims.

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 37.b, and except as provided in Paragraph 37.c.

b. If Settling Party 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, 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, Settling Party shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Settling Party shall retain all Records claimed to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Party's favor.

c. Settling Party cannot make a 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 Settling Party is required to create or generate pursuant to this Settlement Agreement.

38. Business Confidential Claims. Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XI (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded 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 Settling Party 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 Settling Party. Settling Party certifies individually 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 of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. NOTICES AND SUBMISSIONS

39. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Douglas Naftz,
Legal Enforcement Program (8ENF-L)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

As to Settling Party:

E. Blaine Rawson,
Ray Quinney & Nebeker
36 South State Street
Suite 1400
Salt Lake City, UT 84111

Lynn Hart
General Counsel
Sinclair Casper Refining Company
550 East South Temple
Salt Lake City, UT 84102

XIII. INTEGRATION/APPENDICES

40. This Settlement Agreement and its appendices constitutes 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. The following appendix is attached to and incorporated into this Settlement Agreement: "Appendix A" is the map of the Site.

XIV. PUBLIC COMMENT

41. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XV. ATTORNEY GENERAL APPROVAL

42. The Attorney General or his or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).


XVI. EFFECTIVE DATE

43. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

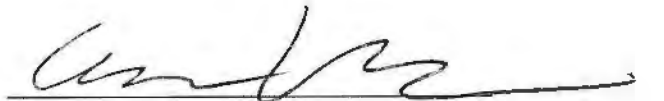
IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

9/2/2014
Dated


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


9/2/2014
Dated


Aaron Urdiales, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Signature Page for Settlement Agreement Regarding Empire State Oil Company Superfund Site

FOR SINCLAIR CASPER REFINING COMPANY:

8/2/16
Dated


Lynn Hart
Secretary and General Counsel
Sinclair Casper Refining Company
550 East South Temple
Salt Lake City, UT 84102