

**CERCLA SECTION 122(h)(1) CASHOUT AGREEMENT
FOR ABILITY TO PAY PARTIES**

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**CERCLA SECTION 122(h)(1) CASHOUT AGREEMENT
FOR ABILITY TO PAY PARTIES**

2007 FEB 28 PM 1:43

IN THE MATTER OF:)	AGREEMENT
)	
BEAVER WOOD)	
PRODUCTS SITE, #L4)	
Columbia Falls, Flathead County, MT)	U.S. EPA Region 8
)	CERCLA Docket No. <u>CERCLA-08-2007-0003</u>
BEAVER WOOD PRODUCTS, INC.)	
RICHARD E. GROSSWILER)	PROCEEDING UNDER SECTION
LORETTA L. GROSSWILER)	122(h)(1) OF CERCLA
SETTLING PARTIES)	42 U.S.C. § 9622(h)(1)
_____)	

EPA REGION VIII
HEARING DI ERK

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and to the signing Assistant Regional Administrators pursuant to internal Regional Delegation No. 14-14-D. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Associate Attorney General of the United States.

2. This Agreement is made and entered into by EPA, and Beaver Wood Products, Inc., Loretta Grosswiler, and Richard Grosswiler ("Settling Parties"). Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Beaver Wood Products Site ("Site") located in a mixed light-industrial and residential use area approximately two miles east of Columbia Falls, in Flathead County, Montana. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

§ 9604, and may undertake additional response actions in the future. The Site is an inactive wood treatment facility, the operations of which resulted in extensive soil contamination. Specifically, hazardous substances found included semi-volatile organic compounds, associated/used total petroleum hydrocarbons, pentachlorophenol, and dioxins, in areas around the facility's dip tanks, wood drying/storage areas, and pole treatment areas. EPA conducted an emergency response action to address these areas of contamination. The removal activities, concluded in the fall of 2004, included the excavation and consolidation of over 10,500 yards of contaminated soil, bioremediation treatment, the backfill of excavated areas, the development and construction of a four-acre waste storage pad area, and the establishment of a six-inch protective cap.

5. In performing response actions at the Site, EPA has incurred response costs of approximately \$5,299,434.69 through September 30, 2006, and may incur additional response costs in the future.

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

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

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

III. PARTIES BOUND

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

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by recognizing that although Settling Parties have no current financial ability to make a cash payment to address their alleged civil liability for the Site, Settling Parties, in consideration for this Agreement, promise to perform the requirements found herein, including, but not limited to, their implementation of protective land use restrictions, as provided in Section XIII (Site Access), and their potential payment of Net Sales Proceeds as provided in Section VI (Payment of Response Costs).

V. DEFINITIONS

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

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

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

c. "Declaration and Notice of Property Use Restrictions" shall mean those provisions developed to protect EPA's response action which will be implemented by Settling Parties as part of this Agreement. These requirements are attached to this Agreement as Appendix D and are incorporated herein by this reference.

d. "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.

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

f. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Parties' mortgage on the Property at the time of the transfer.

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

h. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded 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.*

i. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Parties for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property), less: i) the balance of Settling Parties' mortgage on the Property, ii) closing costs limited to those reasonably incurred and actually paid by Settling Parties associated with the Transfer of the Property, and iii) federal and state taxes owed on the proceeds. Settling Parties shall provide EPA with documentation sufficient to show the total value of all consideration received by Settling Parties for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items i) through iii) above. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Parties, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation must also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a schedule showing all outstanding indebtedness on the Property.

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

k. "Parties" shall mean EPA and Settling Parties.

l. "Property" shall mean that portion of the Site, defined for the purpose of the Federal Lien described in Section VIII (Release of Notice of Federal Lien), encompassing 9.923 acres and acquired by Settling Parties via a warranty deed dated June 19, 1991. The Property is specifically defined in Appendix C.

m. "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).

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

o. "Settling Parties" shall mean Beaver Wood Products, Inc., Loretta Grosswiler, and Richard Grosswiler.

p. "Site" shall mean the Beaver Wood Products Superfund site, encompassing approximately 30 acres, located on Highway 2 East, approximately two miles east of Columbia Falls, in Flathead County, Montana, and as generally depicted in a map attached as Appendix B.

q. "Transfer" shall mean each sale, assignment, transfer or exchange by Settling Parties (or their successors or heirs) of all or any portion of the Property, or of the entity owning all or any portion of the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property: i) is transferred and Fair Market Value is received in consideration, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by all or any portion of the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure.

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

VI. PAYMENT OF RESPONSE COSTS

12. EPA's qualified financial analyst has conducted an investigation and analysis of Settling Parties' financial circumstances and has determined that Settling Parties have no current financial ability to make a cash payment to address their alleged civil liability for the Site.

13. Regarding any future proceeds from a sale of all or any portion of the Property, Settling Parties agree that they will not sell, assign, transfer or exchange all or any portion of the Property except by means of a Transfer. In the event of a Transfer:

a. If the Net Sales Proceeds for Transfer of all or any portion of the Property exceed \$482,000.00, Settling Parties shall pay to EPA 65% of all Net Sales Proceeds exceeding \$482,000.00. Payment shall be made within 15 Days of the effective date of the Transfer of the Property, or Transfer of any portion thereof. The total amount to be paid by Settling Parties pursuant to this Paragraph shall be deposited by EPA in the EPA Hazardous Substance Superfund.

b. Any payment made by Settling Parties pursuant to this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Payments must be received by 11:00 AM Eastern Time for same day credit. The check, or a letter accompanying the check, shall reference the name and address of Settling Parties, the Site name, the EPA Region and Site/Spill ID #L4, and the EPA docket number for this action, and shall be sent to:

Regular Mail:

Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, Etc.:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

At the time of payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID #L4 and the EPA docket number for this action.

c. At least 30 days prior to any Transfer, Settling Parties shall notify EPA of the proposed Transfer, which notice shall include a description of the Property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer. Settling Parties shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and any amount payable to EPA.

d. In the event of a Transfer of all or any portion of the Property, Settling Parties shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except if EPA and Settling Parties modify this Agreement in writing.

VII. FAILURE TO COMPLY WITH AGREEMENT

14. Interest on Late Payments. If Settling Parties fail to make any payment required by Paragraph 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalty.

a. If any amounts due under Paragraph 13 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$50.00 per violation per day that such payment is late.

b. If Settling Parties do not comply with any requirements of Paragraph 13.c. or of Section XIII (Site Access), Settling Parties shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, \$100.00 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Parties, the Site name, the EPA Region and Site/Spill ID #L4 and the EPA docket number for this action, and shall be sent to the same addresses provided in Section VI (Payment of Response Costs), above.

d. At the time of each payment, Settling Parties shall send notice that such payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # L4 and the EPA Docket Number for this action.

e. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties 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 or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings

an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Paragraph 12, from the requirements of Paragraph 13.c. or Section XIII (Site Access), or from performance of any other requirements of this Agreement.

VIII. RELEASE OF NOTICE OF FEDERAL LIEN

18. Within 90 days after closing on the Transfer of the Property, provided that EPA has received any payments required by Sections VI (Payment of Response Costs) and VII (Failure to Comply with Agreement) of this Agreement, and Settling Parties are in compliance with all requirements of this Agreement, EPA shall file a Release of Notice of Federal Lien in the Office of the Clerk and Recorder of Flathead County, Montana. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on April 13, 2005, file number 2005103-14500 and shall not release any other lien or encumbrance which may exist upon the Property.

IX. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Parties shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Parties' false or materially inaccurate information. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY EPA

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

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Parties' ownership or operation of the Site, or upon Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Parties; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Parties, or the financial certification made by Settling Parties in Paragraph 32(b), is false or, in an material respect, inaccurate.

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

XI. COVENANT NOT TO SUE BY SETTLING PARTIES

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

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

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

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

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

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

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in Paragraph 25, 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. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Parties coming within the scope of such reservations.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or

should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section IX.

XIII. SITE ACCESS

29. Commencing upon the effective date of this Agreement, Settling Parties agree to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by Settling Parties to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples; and
- e. Assessing the need for, planning, or implementing response actions at or near the Site.

30. Commencing on the date of lodging of this Agreement, Settling Parties shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the Site response. Such restrictions are defined in the Declaration and Notice of Property Use Restrictions and attached as Appendix D.

a. Settling Parties agree to fulfill all Notice and Recording requirements found in paragraph 3 of Appendix D. Within 45 days of entry of this Agreement, Settling Parties shall execute and record the Declaration and Notice of Property Use Restrictions in the Office of the Clerk and Recorder of Flathead County, Montana. Within 30 days of recording such Declaration and Notice of Property Use Restrictions, Settling Parties shall provide EPA with a certified copy of the original recorded document, showing the clerk's recording stamps.

31. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. CERTIFICATION

32. Settling Parties hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Parties' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Parties execute this Agreement; and

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

XV. NOTICES AND SUBMISSIONS

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

As to EPA:

Michael P. Rudy, Superfund Enforcement
US EPA, Region 8 (ENF-RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

As to Settling Parties:

Mr. Richard and Ms. Loretta Grosswiler
445 West Colorado Street
Kalispell, Montana 59901

XVI. INTEGRATION/APPENDICES

34. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between 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 is a list of the financial documents submitted to EPA by Settling Parties.

Appendix B provides a general map of the Site.

Appendix C is a legal definition of that portion of the Site defined as the Property.

Appendix D is a document, entitled "Declaration and Notice of Property Use Restrictions," which sets forth the protective land use restrictions for the Property.

XVII. PUBLIC COMMENT

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

XVIII. EFFECTIVE DATE

36. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 35 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

IT IS SO AGREED:

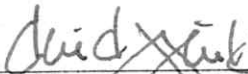
U.S. Environmental Protection Agency:



Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice,
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

February 26, 2007

Date

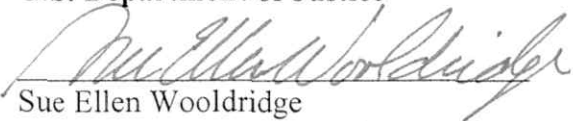


David J. Janik, Acting Director
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice,
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

15 February 2007

Date

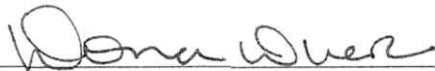
U.S. Department of Justice



Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

1/10/07

Date



Donna Duer
Trial Attorney, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

2/2/07

Date

Settling Parties:

Richard Grosswiler
Loretta Grosswiler and Richard Grosswiler
for Beaver Wood Products, Inc.

11-14-06
Date

Loretta Grosswiler
Loretta Grosswiler

11-14-06
Date

Richard Grosswiler
Richard Grosswiler

11-14-06
Date

Appendix A

1. Federal Income Tax Returns (1040), Richard and Loretta Grosswiler
2. Cancelled checks from Richard and Loretta Grosswiler reflecting debt payments
3. "Assignment of Promissory Note," First Interstate Bank and Richard and Loretta Grosswiler

Appendix C

**Legal Descriptions Based on Certified Appraisal Completed on October 12, 2000 and an
Updated Ownership Records Check Conducted on May 11, 2004 & March 8, 2005
Certificate of Survey Number 9254
NE 1/4, Section 15, T30NR20W
Flathead County, Montana**

Parcel A

That portion of the Northeast 1/4, Section 15, Township 30 North, Range 20 West, Flathead County, Montana described as follows: Commencing At The Center 1/4 Corner, Section 15; Thence Along The West Line Of The Northeast 1/4 North 0 Degree 33' 27" East 575.64 Feet To The Southeasterly Line of Columbia Heights Addition No. 1; Thence Along The Southeasterly Line North 43 Degrees 17' 19" East 11.48 Feet To The Southeast Corner Of Said Subdivision; Thence Along The East Line Of Said Subdivision And Along The East Line of Columbia Heights North 0 Degrees 24' 23" East 419.41 Feet To The Point of Beginning; Thence Continuing Along The East Line North 0 Degree 24' 23" East 461.40 Feet To The Southeasterly Line Of U.S. Highway No. 2; Thence Along The Southeasterly Line Of The Highway North 43 Degrees 27' 27" East 393.00 Feet; Thence South 0 Degrees 33' 27" West 747.30 Feet; Thence North 89 Degrees 52' 20" West 266.32 Feet To The Point of Beginning, Containing 3.705 Acres Of Land, All As Shown Heron.

Parcel B

That portion of the Northeast 1/4, Section 15, Township 30 North, Range 20 West, Flathead County, Montana described as follows: Beginning At The Center 1/4 Corner, Section 15; Thence Along The West Line Of The Northeast 1/4 North 0 Degree 33' 27" East 575.64 Feet To The Southeasterly Line of Columbia Heights Addition No. 1; Thence Along The Southeasterly Line North 43 Degrees 17' 19" East 11.48 Feet To The Southeast Corner Of Said Subdivision; Thence Along The East Line Of Said Subdivision And Along The East Line Of Columbia Heights North 0 Degree 24' 23" East 419.41 Feet; Thence South 89 Degree 52' 20" East 266.32 Feet; Thence South 0 Degree 33' 27" West 1003.43 Feet To The South Line Of The Northeast 1/4; Thence Along The South Line North 89 Degrees 52' 20" West 273.00 Feet To The Point of Beginning, Containing 6.218 Acres of Land, All As Shown Hereon.
Subject To County Road Right of Way As Shown.

Appendix D

DECLARATION AND NOTICE OF PROPERTY USE RESTRICTIONS

This Declaration and Notice for the creation of property use restrictions (the "Declaration") is made this _____ day of _____, 2007, by **Richard and Loretta Grosswiler** (the "Owners").

RECITALS

A. Richard and Loretta Grosswiler are the current owners of certain real property generally described as located on U.S. Highway 2E, approximately two miles east of Columbia Falls in Flathead County, Montana, hereafter referred to as the "Site" (more particularly shown in Exhibit A attached hereto).

B. Areas within the Site have been the subject of a federally funded cleanup as part of the Beaver Wood Products Superfund Site. The cleanup of these areas included excavation, consolidation, and capping of contaminated soils, hereafter referred to as the "Capped Areas" (more particularly described in Exhibit B attached hereto). Lack of maintenance or disturbance of the Capped Areas could cause exposure to contamination and a risk to the public health, safety or welfare and could cause an environmental threat.

C. Owners and the United States Environmental Protection Agency (the "EPA"), are entering into a settlement pursuant to Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 122(h)(1), 42 U.S.C. § 9622(h)(1), to resolve Owners' Superfund liability (the "Settlement"). The Settlement is being entered concurrently with this Declaration, Docket No. _____.

D. Owners desire and intend to create the below enumerated land use restrictions, which limit the use of the Capped Areas, by means of this written Declaration, and to provide notice of such restrictions by recording this Declaration in the Office of the Clerk and Recorder of Flathead County, Montana.

DECLARATION REGARDING PROPERTY USE RESTRICTIONS

NOW, THEREFORE, in consideration of the value and legal protections afforded by the Settlement, Owners, on behalf of themselves, their heirs, successors, and assigns, do hereby agree to the following covenants, conditions, terms, rights and restrictions:

- a. In order to maintain an environmental and human health protection level of no more than forty-eight (48) parts per million of pentachlorophenol ("PCP") in Site soils, Owners shall not petition for or support any change of zoning from the current industrial designation.
- b. Owners shall not dig, move, or remove any soils that were excavated or treated as part of cleanup of the Capped Areas. Further, Owners shall not conduct gravel pit operations in the Capped Areas.

- c. Owners shall not dig, move, or remove the cap (or soils thereunder) which is located within the defined Capped Areas of the Site. Such cap contains contaminated soils excavated and consolidated as part of Site cleanup, and to ensure protectiveness, Owners shall maintain the cap with at least a six (6) inch layer of clean soil. In light of the above prohibitions against cap disturbance, Owners shall insure that all activities regarding maintenance of the cap are done in a manner that prevents contaminant exposure.
- d. For the purpose of ensuring the continued protectiveness of the response, Owners hereby agree to permit local, state, or federal government officials to enter and access the Capped Areas, for the purpose of conducting unannounced inspections. Such officials would be verifying that no action is being taken in violation of the terms of this Declaration or of any federal or state environmental laws or regulations, and would be monitoring the Capped Areas by means including sampling of water and soils.
- e. The Capped Areas shall not be developed or used for residential purposes.

GENERAL PROVISIONS

NOW, THEREFORE, in consideration of the value and legal protections afforded by the Settlement, Owners, on behalf of themselves, their heirs, successors, and assigns, do agree to the following:

1. Purpose: The purpose of the property use restrictions set forth above is to mitigate the risk posed to the public health, safety, and welfare and the environment by minimizing the potential for exposure to contaminated soil that has been excavated, consolidated, and capped at the Site. To achieve such goal, the further purpose of this Declaration is that the herein contained covenants, conditions, terms, rights and restrictions shall apply to the use of the Capped Areas and shall be binding upon Owners, their heirs, successors, and assigns from this date forward.
2. Reserved rights: Owners hereby reserve unto themselves, their heirs, successors, and assigns, all rights and privileges in and to the use of the Capped Areas which are not incompatible with the covenants, conditions, terms, rights and restrictions established herein. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the National Contingency Plan, or other federal law.
3. Notice and recording: Owners shall record this Declaration in the Office of the Clerk and Recorder of Flathead County, Montana. Further, Owners, their heirs, successors, and assigns, agree to include in any instrument conveying any interest in the Capped Areas, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO PROPERTY USE RESTRICTIONS, DATED

_____, 200__, RECORDED IN THE PUBLIC LAND
RECORDS ON _____, 200__, IN BOOK _____,
PAGE _____.

Within thirty (30) days of the date any such instrument of conveyance is executed, Owners must provide EPA with a certified true copy of said instrument and, having been recorded in the public land records, its recording reference.

4. Contact information: Written communications regarding this Declaration shall be sent by first class mail, postage prepaid, addressed as follows:

To Owners:

Mr. Richard and Ms. Loretta Grosswiler
445 West Colorado Street
Kalispell, Montana 59901

To EPA:

Mike Rudy
Enforcement Specialist
US EPA, Region 8 (ENF-RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

5. Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Site is located.

6. Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.


7. Joint Obligation: As two or more parties are identified as Owners herein, the obligations imposed by this instrument upon them shall be joint and several.

IT IS AGREED, that the covenants, conditions, terms, rights and restrictions set forth in this Declaration shall bind Owners, their heirs, successors, and assigns.

IN WITNESS WHEREOF, Owners have caused this Declaration to be signed in their names.

Executed this 14th day of November, 2006.
By:

LORETTA AND RICHARD GROSSWILER



Current Owner



Current Owner

STATE OF MONTANA)
)
 FLATHEAD COUNTY)
)
 OFFICE OF REGISTER OF DEEDS)
)
)
 Filed for record the ____ Day of _____, 2007,)
 at ____ o'clock and ____ minutes, and recorded)
 in Book _____ of Deeds on Page _____.)
)
 _____)
 Register of Deeds)
)
 _____)
 Deputy)
)
 Fee \$ _____)
)
 _____)

On this ____ Day of _____, 2007, before me, the undersigned, a Notary Public in and for the State of Montana, duly commissioned and sworn, personally appeared Richard Grosswiler and Loretta Grosswiler, known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said person for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

 Notary Public, Montana
 My commission expires: _____

- Attachments: Exhibit A - Map of the Site
- Exhibit B - Survey Describing Site Areas Subject to Land Use Restrictions, known as "Capped Areas"

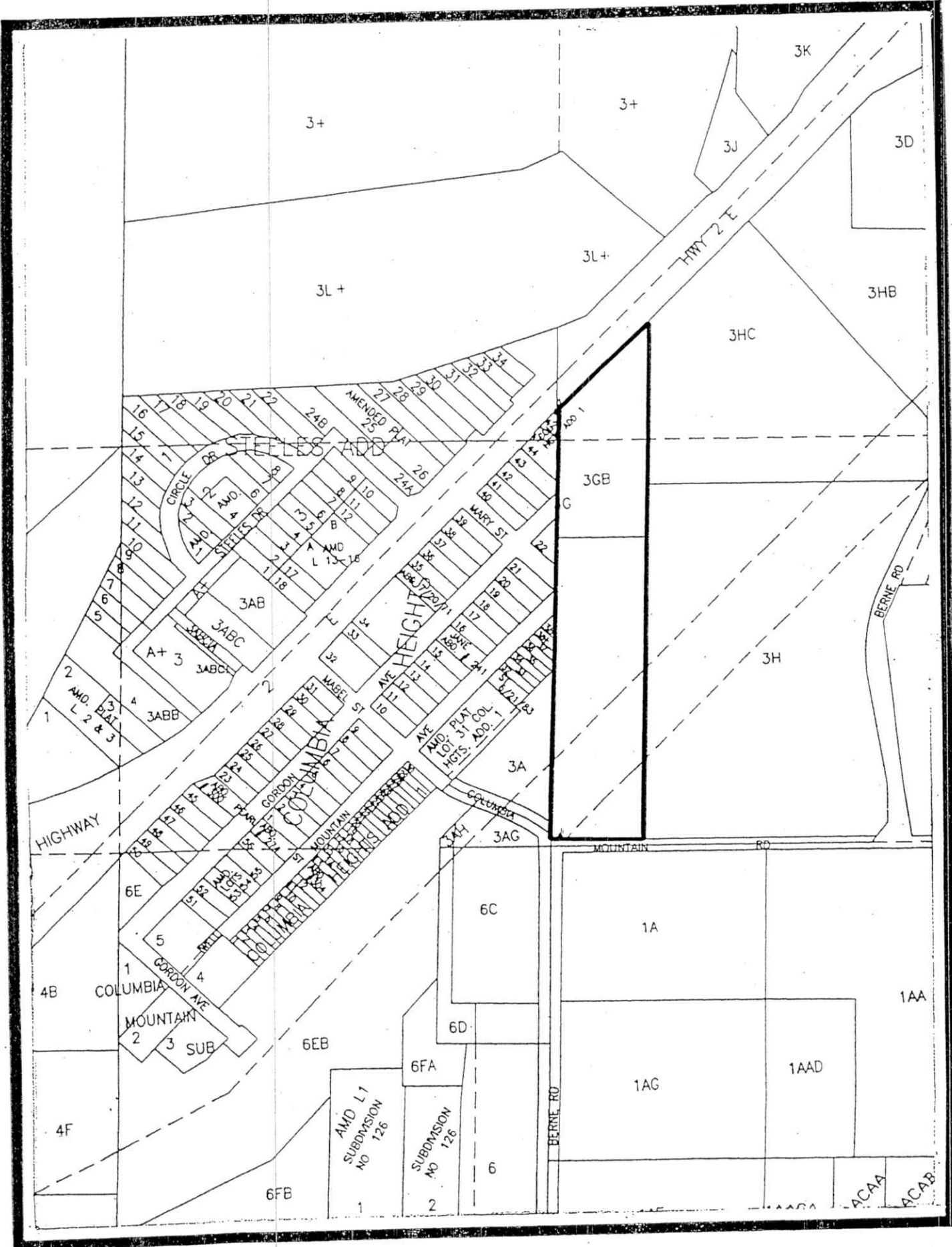


Exhibit B

Start	4024	4364.47111	4658.50038	0.00	
IN	N 0°00'00" E	0.0000			
	4024	4364.47111	4658.50038	0.00	
IN	S 0°32'56" W	144.1939			
	4023	4220.28382	4657.11882	0.00	
IN	S 77°54'19" W	77.0854	3091.34		
	4012 1/2" BLOCK	4204.13216	4581.74451		3091.34
IN	N 0°48'03" W	145.9705	0.16		
	4011 1/2" BLOCK	4350.08837	4579.70440		3091.50
IN	N 79°39'20" E	80.0979	-3091.50		
	4024	4364.47111	4658.50038	0.00	

Area = 11187.9045 Sq. Feet or 0.2568 Acres

Start	4028	3839.39218	4653.37763	0.00	
IN	N 0°00'00" E	0.0000			
	4028	3839.39218	4653.37763	0.00	
IN	S 23°24'04" W	193.9875	3089.37		
	4002 1/2" BLOCK	3661.36061	4576.33266		3089.37
IN	S 88°38'10" W	190.6153	-3089.37		
	4027	3656.82379	4385.77136	0.00	
IN	N 0°26'09" E	293.8988			
	4026	3950.71413	4388.00747	0.00	
IN	N 78°25'52" E	272.5215			
	4025	4005.36684	4654.99261	0.00	
IN	S 0°33'27" W	165.9825			
	4028	3839.39218	4653.37763	0.00	

Area = 78019.7731 Sq. Feet or 1.7911 Acres

ENVIRONMENTAL PROTECTION AGENCY

PROPOSED AGREEMENT REGARDING SITE COSTS, SITE ACCESS,
PROPERTY USE RESTRICTIONS, AND COVENANTS NOT TO SUE FOR THE
BEAVER WOOD PRODUCT SITE, FLATHEAD COUNTY, MONTANA.

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public
comment.

SUMMARY: In accordance with the requirements of section
122(h) (1) of the Comprehensive Environmental Response
Compensation, and Liability Act of 1980, as amended
("CERCLA"), 42 U.S.C. 9622(h) (1), notice is hereby given
of the proposed administrative settlement under section
122(h) of CERCLA, 42 U.S.C. 9622(h) between the U.S.
Environmental Protection Agency ("EPA") and Beaver Wood
Products Incorporated, Loretta Grosswiler, and Richard
Grosswiler ("Beaver Wood Products") (collectively,
"Settling Parties"). Settling Parties consent to and will
not contest the authority of the United States to enter
into this Agreement or to implement or enforce its terms.
In return, Settling Parties will receive Covenants Not to
Sue from EPA. EPA has incurred response costs at the Site
in an amount totaling \$5,299,434.69. The EPA alleges that
the Settling Parties are a responsible parties pursuant to

response. Such restrictions are defined as Land Use Restrictions and are included as an Appendix to this Agreement. Settling Parties agree to fulfill all Notice and Recording requirements. Within 45 days of entry of this Agreement, Settling Parties shall execute and record the Land Use Restrictions in the Office of the Clerk and Recorder of Flathead County, Montana and within 30 days of recording the Land Use Restrictions, Settling Parties shall provide EPA with a certified copy of the original recorded Land Use Restrictions, showing the clerk's recording stamps. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

FOR FURTHER INFORMATION CONTACT: Michael Rudy,
Enforcement Specialist, Environmental Protection Agency-
Region 8, Mail Code 8ENF-RC, at the above address, (303)
312-6332.

Dated: 26 February 2007

Sharon L. Kercher

Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice,
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129