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IN THE MATTER OF:

ACM Smelter and Refinery Site  
Great Falls, Cascade County, Montana

Atlantic Richfield Company and  
ARCO Environmental Remediation, L.L.C.,

SETTLING PARTIES

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SETTLEMENT AGREEMENT  
FILED  
EPA REGION VIII  
HEARING CLERK  
U.S. EPA Region 8  
CERCLA Docket No. **CERCLA-08-2019-0001**

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 undersigned officials. This Settlement 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 Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

2. This Settlement Agreement is made and entered into by EPA, Atlantic Richfield Company, and ARCO Environmental Remediation, L.L.C. Atlantic Richfield Company and ARCO Environmental Remediation, L.L.C. are hereinafter collectively referred to as "Settling Parties." Each 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 ACM Smelter and Refinery Superfund Site ("Site") located generally on the north bank of the Missouri River, near Great Falls, Cascade 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.

5. In performing response action, EPA has incurred response costs at or in connection with the Site.

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 or to be incurred at or in connection with the Site.

7. EPA and Settling Parties 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 Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain 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

8. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a

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

9. 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:

"Affected Property" shall mean all real property at the Site and any other real property, owned or controlled by the Settling Parties, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, any areas identified on the map in Appendix A.

"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.

"DOJ" shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

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

"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 <https://www.epa.gov/superfund/superfund-interest-rates>.

"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 Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Settling Parties.

“Past Response Costs” shall mean all costs, including but not limited to, direct and indirect costs that EPA, the U.S. Department of Justice on behalf of EPA, or the Agency for Toxic Substances and Disease Registry has paid at or in connection with the Site, including costs associated with the “Black Eagle Railroad Beds” area identified on the map in Appendix A, through September 30, 2016, plus accrued Interest on all such costs through such date.

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

“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 Parties” shall mean Atlantic Richfield Company and ARCO Environmental Remediation, L.L.C.

“Site” shall mean the ACM Smelter and Refinery Superfund Site, located generally on the north bank of the Missouri River, near Great Falls, Cascade County, Montana and generally shown on the map included in Appendix A.

“ACM Smelter and Refinery Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“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 EPA.

## V. PAYMENT OF PAST RESPONSE COSTS

10. **Payment by Settling Parties for Past Response Costs.** Within 30 days after the Effective Date, Settling Parties shall pay to EPA \$851,393.17.

11. Settling Parties shall make payment 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"

Such payment shall reference Site/Spill ID Number 08-19 and the EPA docket number for this action.

12. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 10 shall be deposited by EPA in the ACM Smelter and Refinery Special Account Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

13. **Notice of Payment.** At the time of payment, Settling Parties shall send notice that payment has been made to EPA in accordance with Section XI (Notices and Submissions), and to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

**EPA CFC by email:** cinwd\_acctsreceivable@epa.gov

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

Such notice shall reference Site/Spill ID Number 08-19 and the EPA docket number for this action.

## VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. **Interest on Late Payments.** If any Settling Party fails to make any payment required by Paragraph 10 (Payment by Settling Parties for Past Response Costs) 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 to EPA under Paragraph 10 (Payment by Settling Parties for Past Response Costs) are not paid by the required date, Settling Parties 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 14 (Interest on Late Payments), \$2,500.00 per violation per 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 Parties shall identify all payments to EPA under this Paragraph as "stipulated penalties," shall reference Site/Spill ID Number 08-19 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  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

c. At the time of payment, Settling Parties shall send notice that payment has been made as provided in Paragraph 13 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph 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 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.

16. 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 Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement 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 Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the insolvency of any Settling Party or the failure by any Settling Party to make the payments required under this Settlement Agreement, the remaining Settling Party shall be responsible for such payments.

18. 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 Parties 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

19. **Covenants for Settling Parties 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 Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These

covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. These covenants extend only to Settling Parties and do not extend to any other person.

### VIII. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within Paragraph 19 (Covenants for Settling Parties by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties 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;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. compliance with two administrative settlement agreements and orders on consent for remedial investigation/feasibility study at the Site (*see Administrative Settlement Agreement and Order on Consent for Operable Unit 1 Remedial Investigation/Feasibility Study*, U.S. EPA Region 8 CERCLA Docket No. CERCLA 08-2011-0017 (Sept. 8, 2011); and *Administrative Settlement Agreement and Order on Consent for Operable Unit 2 Remedial Investigation/Feasibility Study*, U.S. EPA Region 8 CERCLA Docket No. CERCLA 08-2018-0006 (May 3, 2018)).

21. 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 PARTIES

22. **Covenants by Settling Parties.** Settling Parties covenant 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 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 Montana, 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.

23. 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).

24. **Waiver of Claims by Settling Parties**

a. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) **De Minimis/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 CERCLA Section 122(g) *de minimis* settlement, or 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 24 shall not apply with respect to any defense, claim, or cause of action that a 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 such Settling Party.

**X. EFFECT OF SETTLEMENT/CONTRIBUTION**

25. Except as provided in Paragraph 24 (Waiver of Claims by Settling Parties), 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 Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that 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).

26. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each 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.

27. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each 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).

28. Each 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. Each 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 10 days after service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

29. 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, 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 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.

30. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) 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 26, and that, in any action brought by the United States related to the “matters addressed,” such Settling Party 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 during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

## **XI. NOTICES AND SUBMISSIONS**

31. 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 Parties in writing. Except as otherwise provided, notice by email or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

### **As to EPA:**

Charles Coleman, Remedial Project Manager. Address: U.S. EPA Region 8, Montana Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. Email address: [Coleman.Charles@epa.gov](mailto:Coleman.Charles@epa.gov)

### **As to Settling Parties:**

Cord Harris, Mining Portfolio Manager, Atlantic Richfield Company. Address: 201 Helios Way, 6.374C, Houston, TX 77079. Email address: [cord.harris@bp.com](mailto:cord.harris@bp.com)

## **XII. INTEGRATION/APPENDICES**

32. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix A" is a map of the Site.

## **XIII. PUBLIC COMMENT**

33. 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.

## **XIV. ATTORNEY GENERAL APPROVAL**

34. 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).

## **XV. EFFECTIVE DATE**

35. 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 33 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

Signature Page for Settlement Regarding ACM Smelter and Refinery Superfund Site

ATLANTIC RICHFIELD COMPANY

Date: 7/17/2018

BY: *Benjamin Cord Harris*  
Cord Harris  
Attorney-In-Fact

ARCO ENVIRONMENTAL REMEDIATION LLC

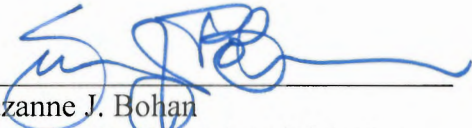
Date: 7/17/2018

BY: *Benjamin Cord Harris*  
Cord Harris  
Attorney-In-Fact

IT IS SO AGREED:

11/15/18  
Date

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_  
Suzanne J. Bohan  
Assistant Regional Administrator,  
Office of Enforcement, Compliance  
and Environmental Justice, Region 8

**APPENDIX A**

**SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS**

**MAP**

ACM Smelter and Refinery Site  
Great Falls, Cascade County, Montana

