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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: Lot 2, Section 24, T. 4 South, R. 5 West "Kennecott Waterman Area Parcel" Stockton, Tooele County, Utah	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION
Kennecott Utah Copper Corporation and its wholly owned subsidiary OM Enterprises Company Respondents	U. S. EPA Region 8 CERCLA Docket No. **CERCLA-08-2008-0008**
	Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Kennecott Utah Copper Corporation ("KUCC") and its wholly owned subsidiary OM Enterprises Company ("Respondents"). This Settlement Agreement provides for the performance of a Removal Action by Respondents, the reimbursement of certain response costs incurred by the United States at or in connection with Lot 2, Section 24, T 4, 4 South, R 5 West also referred to as the Kennecott Waterman Area Parcel ("Property"). Operable Unit 4 (OU4) of the Jacobs Smelter Superfund Site (the "Site") generally located in the vicinity of Stockton, Tooele County, Utah.

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

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

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents 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 findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

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

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives working at the Property receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement. Respondents shall ensure that all successors in title or anyone to whom any interest in the Property is conveyed shall receive notice of the matters addressed herein, and any contamination remaining on or around the subject Property by means of institutional controls including but not limited to an environmental covenant in the form of Attachment A.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement 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 Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on 7/29/08, by the Regional Administrator, EPA Region 8, or his/her delegate, and all attachments thereto. The Action Memorandum is attached as Attachment B.

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

c. "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 holiday, the period shall run until the close of business of the next working day.

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

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States, its contractors or agents. For purposes of this Settlement Agreement the State of Utah, UDEQ shall be considered a designated representative of EPA as described in Section XIV herein.

f. "UDEQ" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 21 (costs and attorneys fees and any monies paid to secure access, including the

amount of just compensation), and Paragraph 31 (emergency response), and Paragraph 56 (work takeover). Future Response Costs shall also include all Interim Response Costs incurred up to and including the Effective Date."

h. "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.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, paid or incurred by the United States in connection with the Property and Site from May 24, 2008 through the Effective Date, even if paid after that date.

j. "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.

k. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all documents attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any attachment, this Settlement Agreement shall control.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondents.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs attributable to this Settlement Agreement, that the United States paid at or in connection with the Property through the Effective Date, plus Interest on all such costs through such date. Costs attributable as Past Response Costs include costs incurred while the Property was part of OU2, as well as costs incurred after the designation of the Property as OU4. Past Response Costs include costs incurred through May 24, 2008.

o. "Property" shall mean Lot 2, Section 24, T. 4 South, R. 5 West, also referred to as the Kennecott Property, encompassing approximately 35.40 acres, known as Operable Unit 4 (OU4) of the Site, and subject of this Settlement Agreement. Attachment C contains a Map of OU4.

p. "Respondents" shall mean those Parties identified in Paragraph 1.

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

r. "Site" shall mean the Jacobs Smelter Superfund Site, encompassing approximately 1400 acres, located in Stockton, Tooele County, Utah and depicted generally on the map attached as Appendix C. Respondents' property, ("Property") is entirely within the presently identified boundaries of Operable Unit 2 (OU2) of the Site and was a portion of OU2 until the creation of OU4.

s. "State" shall mean the State of Utah, Department of Environmental Quality, which for purposes of the field Work in this Settlement Agreement shall be considered a designated representative of the EPA as described in Section XXVII herein.

t. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Removal Action, as set forth in Attachment D to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

u. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any hazardous material as defined by the State of Utah and the Utah Department of Environmental Quality (UDEQ), including UAC R315-2.

v. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

A. The entire Site is located at the base of the west side of the Oquirrh Mountains within Rush Valley, Tooele County, near the Town of Stockton, Utah.

B. This Site contains at least four (4) historical smelter locations which were operational during the latter half of the 19th century. These mining and smelting activities resulted in large amounts of waste materials containing heavy metals contaminating large areas within the Jacob's Smelter Superfund Site.

C. The entire Jacobs Smelter Superfund Site was originally identified in 1997. Pursuant to the National Contingency Plan (NCP), 40 CFR §415(b) and 42 U. S. C. §9605, the Jacob's Smelter Superfund Site was proposed for listing on the National Priorities List (NPL) in 1999

D. Work on OU2 of the Jacob's Smelter Superfund Site is ongoing.

E. At the time of the Jacob's Smelter Superfund Site listing, KUCC owned the Property. Since then, the Property has been transferred to O. M. Enterprises,

Inc., a wholly owned subsidiary of KUCC. The full legal description of the parcel, which comprises the Property subject to this Settlement, is contained in Attachment E.

F. Human Health and Ecological Risk Assessments and a Remedial Investigation/ Feasibility Study (RI/FS) for OU2, including the Property were (was) conducted and issued for the Jacob's Smelter Superfund Site per the NCP, 40 CFR 400 et. seq.

G. No Record of Decision (ROD) has been issued for the Jacob's Smelter Superfund Site OU2.

H. Heavy metal containing waste material discovered in OU4 contains lead in levels in excess of 10,000 ppm of lead.

I. In an effort to address concerns about the waste materials at OU4 which contain high levels of heavy metals, the Respondents, without admitting liability, have volunteered to undertake (1) the activities described in the SOW, and (2) further actions described in this Settlement Agreement.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and preliminary information gathered relating to the Site and supporting this Removal Action, EPA has determined that:

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

b. The material with heavy metal contamination found at the Property, is a "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U. S. C. § 9601(14).

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U. S. C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Property. Respondents are the past or present "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U. S. C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U. S. C. § 9607(a)(1) and (2).

e. An actual or threatened "release" of a hazardous substance has occurred and is occurring from the facility as defined by Section 101(22) of CERCLA, 42 U. S. C. § 9601(22).

f. The Removal Action required by this Settlement Agreement is necessary to protect the public health or welfare or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300. 700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

10. Respondents shall notify EPA of the name(s) and qualification(s) of any contractor(s) and/or), subcontractor(s) or engineer(s) retained to perform the Work, at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors and/or engineer(s) retained by Respondents. If EPA disapproves of a selected contractor, subcontractor or engineer, Respondents shall retain a different contractor, subcontractor or engineer and shall notify EPA of the name and qualifications of the person selected within five (5) days of EPA's disapproval.

11. Respondents have designated Kelly Payne as Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Work at the Property. EPA approves this Project Coordinator. If a different or additional Project Coordinator is designated, EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of a designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

12. EPA has designated Lisa Lloyd of the Superfund Remedial Branch, the Remedial Project Manager (RPM). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the RPM (Ms. Lloyd at 1595 Wynkoop Street, Denver Colorado 80202-1129 mail code EPR-SR. Respondents may choose to use certified mail, express mail, or other delivery method

documenting delivery. Informal submissions may be made by e-mail to Lloyd.lisa@epa.gov. Copies of documents to be submitted to UDEQ shall be submitted to Tom Daniels, Utah Department of Environmental Quality (UDEQ), Division of Environmental Response and Remediation (DERR), 168 North 1950 West, Salt Lake City, Utah 84114, or informal submissions may be sent to: Tdaniels@utah.gov.

13. EPA and Respondents shall have the right, subject to Paragraph 11, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA 10 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

14. Respondents shall perform, all actions necessary to implement the Statement of Work, as described in an approved Work Plan. The actions to be implemented generally include, but are not limited to, the following:

a. Soil sampling on the Property;

b. Qualified laboratory analysis or XRF data of soil samples for metals including, lead and arsenic;

c. Mapping of the sample locations and analytical results, to determine specific on-site sources and general off-site sources of contamination;

d. Performing all Work, including removal of hazardous substances on the Property and disposal of impacted soils at Respondent's Arthur Stepback Repository, to the satisfaction of EPA and in accordance with the NCP, complying with all applicable or relevant and appropriate requirements (ARAR's);

e. Complying with Institutional Controls, as determined by EPA to be applicable;

f. Performing all other requirements in accordance with this Settlement Agreement and the Statement of Work attached hereto (Attachment D) and incorporated by reference as if fully set forth herein.

15. Work Plan and Implementation.

a. Within 30 days after the Effective Date, or as the RPM shall require, Respondents shall submit to EPA for approval a draft Work Plan for performing the Removal Action generally described in Paragraph 14 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 10 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 15(b).

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

17. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No.9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC

procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 21 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

18. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement monthly, on the anniversary date of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit to EPA and UDEQ an electronic copy and two hard copies of all plans, reports or other submissions required by this Settlement Agreement and the SOW or any approved work plan. One hard copy shall be submitted to EPA and one hard copy shall be submitted to the UDEQ. EPA has authority to approve, disapprove or request modification of submittals.

19. Final Report to EPA. Within 60 days after completion of all Work required by the SOW or the RPM, and required by this Settlement Agreement, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-the Property or handled on-the Property, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of all sampling and analysis performed and information gathered, evaluation of information as to location of sources, summary of on-site source removal performed if required by either the RPM, and shall summarize all activities required by the SOW and accompanying appendices. It shall contain all relevant documentation generated during the Removal Action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

SITE ACCESS AND INSTITUTIONAL CONTROLS

20. a. If the Property, or any other property where access is needed to implement this Settlement Agreement or Property work, is owned or controlled by any of the Respondents or any person affiliated with Respondents, then Respondents shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Property , or such other property, for the purpose of conducting any activity related to this Settlement Agreement or Property remediation. In addition, Respondents shall notify any persons to whom they transfer any interest in the Property of the contamination known to Respondents, remaining on or around the Property at the Completion of Work (Section XXVIII). Respondents agree to require that their successors or persons to whom they transfer an interest in the Property comply with this Section (Property, and Sections IX (Site Access) and X (Access to Information).

b. Respondents shall execute an environmental covenant to the benefit of EPA and the State of Utah. Respondents shall place on the face of the deed to the Property, language submitted to and approved by EPA, giving notice that the Property is subject to an environmental covenant. This covenant and deed with notice shall be recorded into the chain of title of the Property within 45 days of submission of the Final Report (Paragraph 19). Respondents shall furnish EPA and UDEQ each with a copy of the recorded instruments within twenty days of recording. In addition, Respondents, at least 30 days prior to the conveyance of any interest in real property at the Site, shall give written notice to the transferee that the Property is/was subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents agree to require that their successors or assigns comply with this Paragraph 20 and Sections IX (Site Access) and X (Access to Information). Respondents shall comply with the Covenant and other Institutional Controls required by the SOW.

21. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the RPM. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. For purposes of this

Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

22. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

23. Respondents shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Property or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

24. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Settlement Agreement 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Respondents that the documents or information 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 documents or information without further notice to Respondents.

25. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

26. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other documents or information evidencing conditions at or around the Property.

XI. RECORD RETENTION

27. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), each Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Property, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work. For the purposes of this Section, records or documents can include either electronic or written/paper documents; however, the requirement to retain such records does not apply to both forms, but to either at the discretion of Respondents.

28. At the conclusion of this document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA or, if requested, the State of Utah. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

29. Each Respondent hereby 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, documents or other information (other than identical copies) relating to its potential liability regarding the Property since notification of potential liability by EPA or the State, or the filing of suit against it regarding the Property and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C.§§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

30. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in

Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. 300.415(j), all actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan. Proposed ARARs are subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

31. In the event any action or occurrence during performance of the Work causes or threatens a release of Waste Material from the Property that constitutes an emergency situation, or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the RPM at (303) 312-6537 or, in the event of his/her immediate unavailability, the Regional Duty Officer at (303) 293-1788 of the incident or Property conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

32. In addition, in the event of any release of a hazardous substance from the Property, Respondents shall immediately notify the RPM at (303) 312-6537 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C.§ 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF REMEDIAL PROJECT MANANGER

33. The RPM shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Property. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

XV. PAYMENT OF RESPONSE COSTS

34. Payment for Past Response Costs.

a. Within 45 days after the Effective Date, Respondents shall pay to EPA Past Response Costs totaling $86,559.61. This amount includes Past Response costs incurred at both OU2 and OU4 of the Site. A portion of this amount ($77,333.69) is a percentage of OU2 Past Response Costs incurred through the date of designation of the Property as OU4, allocated based on the geographic ratio of the Property to the size of OU2. The remainder is the past costs incurred at OU4 up to and including May 24, 2008. Payment of the total shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." For certified or cashier's check, payment must be received by 11:00 a.m. Eastern Time for same day credit. Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Property name, the EPA Region and Site/Spill ID Number 082X, and the EPA docket number for this action, and shall be sent to:

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
Government Lockbox 979076
US EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone 314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

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

On-Line Payments:

There is now an On Line Payment Option, available through the Dept. of the Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV

b. At the time of payment, Respondents shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

Dana Anderson, N WD
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

and

Kelcey Land,
Cost Recovery Program Manager,
ENF-RC, US EPA, 1595 Wynkoop Street,
Denver. CO 80202-1129.

c. The total amount to be paid by Respondents pursuant to Paragraph 34(a) shall be deposited in the Jacobs Smelter Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Property or the Jacob's Smelter Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

35. Payments for Future Response Costs.

a. Respondents shall pay EPA all OU4 Future Response Oversight Costs not inconsistent with the NCP until the Notice of Completion of the Work according to Section XXVIII On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIO$ report or an equivalent cost summary. Respondents shall make all payments within 45 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 37 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 082X. For certified or cashier's check, payment must be received by 11:00 AM Eastern Time for same day credit. Respondents shall send the check(s) to:

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
Government Lockbox 979076
US EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

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

On-Line Payments:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:
WWW.PAY.GOV

c. At the time of payment, Respondents shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

Dana Anderson, NWD
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

And

Kelcey Land,
Cost Recovery Program Manager,
ENF-RC, US EPA, 1595 Wynkoop Street,
Denver, CO 80202-1129.

d. The total amount to be paid by Respondents pursuant to Paragraph 35(a) shall be deposited by EPA in the Jacobs Smelter Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Property or the Jacob's Smelter Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

36. Respondents may contest payment of any Future Response Costs billed under Paragraph 35 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be mailed by certified mail return receipt requested, to the RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 45 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 35. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Colorado and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 45 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 35. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 35. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

37. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes

arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

38. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 21 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

39. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA official at the Region 8 management level or higher will issue a written decision on the dispute to Respondents. For disputes involving the Work the EPA management official shall be the Region 8 Assistant Regional Administrator, Ecosystems Protection and Remediation. If the dispute involves cost recovery the management official shall be the Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

40. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increase of the work, or increased cost of performance.

41. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within 7 days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for

attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

42. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

43. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 44 and 45 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

44. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 44(b):

Penalty Per Violation Per Day	Period of Noncompliance
$ 100.00	1st through 14th day
$ 200.00	15th through 30th day
$ 32,500.00	31st day and beyond

b. Compliance Milestones. Non-compliance is defined to include failure to fully complete all items as written herein or as directed by the RPM.

45. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Section VIII, or to comply with other requirements relating to written documents:

Penalty Per Violation Per Day	Period of Noncompliance
$ 100.00	1st through 14th day
$ 200.00	15th through 30th day
$32,500.00	31st day and beyond

46. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 56 of Section XX, Respondents shall be liable for a stipulated penalty in the amount of $32,500.00.

47. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official, under Paragraph 37 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

49. All penalties accruing under this Section shall be due and payable to EPA within 45 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be paid as outlined in Section XV above except, if payment is to be conveyed by the methods indicated below. Payment by check for penalties and fines should be sent with accompanying transmittal letter(s). Additionally, the certified or cashier's check shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site ID Number 082X, the EPA Docket Number CERCLA-08-2008-0008, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Section XV.

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, etc.:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

50. The payment of penalties for lack of timely submittal shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

51. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision.

52. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 48. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 56. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

53. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U. S.C. §§ 9606 and 9607(a), for the Work, Future Response Costs, Interim Response Costs, and Past Response Costs at OU4 of the Site. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, completion of Work, and payment of Response Costs. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

a. claims based on a failure by Respondents to fully meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past, Interim or Future Response Costs:

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

d. criminal liability;

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

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

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

56. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, and after providing Respondents with notice of such determination, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

57. Respondents 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 the Work, Past Response Costs, Interim Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the 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 Work, Past Response Costs, Interim Response Costs, Future Response Costs, or this Settlement Agreement.

d. Except as provided in Section XXI 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 Paragraphs 55 (b), (c), and (e) - (g) but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

XXII. OTHER CLAIMS

59. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

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

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

XXIII. CONTRIBUTION AND OTHER MATTERS

62. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Past Response Costs, Future Response Costs and Interim Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, Past Response Costs, Interim Response Costs, and Future Response Costs.

INDEMNIFICATION

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

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

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

XXV. INSURANCE

66. At least 10 days prior to commencing any on-Property work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 1.0 million dollars, combined single limit, naming EPA and the Utah DEQ as additional insureds. Within the same time period, Respondents shall provide EPA with certificates of such insurance, and if requested, copies of the policies Respondents shall submit such certificates each year on the anniversary of the Effective Date for the duration of the Settlement Agreement. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing the Work on behalf of Respondents in

furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

67. In the event that response actions at the Property are estimated by EPA to cost $5 million or more, Respondents shall establish and thereafter maintain financial assurance in an amount necessary to complete those response actions. The amount of the financial assurance shall be equivalent to EPA's estimate of the cost of the response action. If necessary, Respondents shall, within thirty (45) days of EPA's determination that response actions at the Property are likely to cost $5 million or more, establish one or more irrevocable letters of credit, which shall be payable to or at the direction of EPA, issued for a period of at least one year, and provide that the expiration date will be automatically extended for a period of at least one year unless Respondents completes the response action or the issuing by financial institution notifies Respondents by certified mail of a decision not to extend the expiration date. If the later occurs, Respondents shall obtain EPA's approval for an alternate financial assurance(s);

68. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 67 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

XXVII. MODIFICATIONS

69. The RPM or his designated representative may approve modifications to any plan or schedule or requirements of the Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's (or his designated representatives') oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

70. If Respondents seek permission to deviate from any approved work plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the

requested deviation until receiving oral or written approval from the RPM or his designated representative pursuant to Paragraph 69.

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

XXVIII. NOTICE OF COMPLETION OF WORK

72. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.* post-removal site controls, or continued record retention or continuing access, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

73. 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.

XXX. EFFECTIVE DATE

74. This Settlement Agreement shall be effective 30 days after the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

The undersigned representative(s) of Respondents certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party(ies) it (they) represent(s) to this document.

Administrative Order on Consent EPA Region 8, and Kennecott Utah Copper Corporation and O. M. Enterprises, Inc. RE: Jacobs Smelter Superfund Site

Agreed this 4th day of August, 2008.

For Respondents Kennecott Utah Copper Corporation

By _____

Title CEO

Agreed this 30th day of July, 2008.

For Respondents OM Enterprises Company

By _____

Title Vice President Long Range Planning

Administrative Order on Consent EPA Region 8, and Kennecott Utah Copper Corporation and O. M. Enterprises, Inc. RE: Jacobs Smelter Superfund Site

It is so ORDERED and Agreed this 27th day of August, 2008.

BY: _____ DATE: 8/27/08
Matthew Cohn
Supervising Attorney, Legal Enforcement Program,
Office of Enforcement, Compliance & Environmental Justice
Region 8
U. S. Environmental Protection Agency

BY: _____ DATE: 8/27/08
for Sharon Kercher
Director, Technical Enforcement Program,
Office of Enforcement, Compliance & Environmental Justice
Region 8
U. S. Environmental Protection Agency

BY: _____ DATE: 8/28/08
David Ostrander
Director, Preparedness, Assessment and Emergency Response Program
Office of Ecosystems Protection and Remediation
Region 8
U. S. Environmental Protection Agency

EFFECTIVE DATE: _____, 2008