

2011 SEP 29 AM 8:29

IN THE MATTER OF:

Granite Timber Post and Pole
Philipsburg, Granite County, MT

Margery Metesh,
SETTLING PARTY

SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST
RESPONSE COSTS

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-2011-0018

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

FILED
EPA REGION VIII
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR ABILITY TO PAY PARTY**

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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, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and to the signing Assistant Regional Administrators pursuant to internal Regional Delegation No. 14-14-D.

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

II. BACKGROUND

3. This Settlement Agreement concerns the Granite Timber Post and Pole ("Site") located 5 miles south of Philipsburg and .5 miles west of Montana Highway 10A in Granite 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. The facility's soils were contaminated with pentachlorophenol (PCP) and other hazardous substances as a result of approximately 40 years of wood treatment operations. EPA's response action included removal of contaminated scrap, tanks, and drums, as well as excavation and consolidation of contaminated soil for treatment and capping.

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

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

7. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Party and her heirs, successors, and assigns. Any change in ownership or corporate or other legal status of 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 in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-6975.

“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.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“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.

“Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (1) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at the Site; (2) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action; and/or (3) provide information intended to modify or guide human behavior at the Site.

“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.

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

“Parties” shall mean EPA and Settling Party.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through April 22, 2010, plus accrued Interest on all such costs through such date.

“Proprietary Controls” shall mean easements or covenants running with the land that (1) limit land, water, or resource use and/or provide access rights, and (2) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 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 Party” shall mean Margery Metesh.

“Site” shall mean the Granite Timber Post and Pole Superfund site, encompassing approximately 25 acres, located 5 miles south of Philipsburg and .5 miles west of Montana Highway 10A in Granite County, Montana, generally shown on the two maps attached hereto as Appendix A.

“Site Management Plan” shall mean the agreement between the Parties and the State of Montana, to be recorded, regarding matters related to the Site Institutional and Proprietary Controls, attached hereto as Appendix B.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

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

“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); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

10. Stipulated Penalty.

a. If Settling Party does not comply with the requirements of Section X. (Notice to Successors-in-Title and Transfers of Real Property) and Section XI. (Access and Institutional Controls), Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$1,000.00 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be paid by official bank check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the part(ies) making payment, the Site name, Site/Spill ID Number 08JE, and the EPA docket number of this action and shall be sent to:

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

c. At the time of payment, Settling Party shall send notice that payment has been made to:

Martha Walker
Finance Program Manager
US EPA, Region 8, 8TMS-F
1595 Wynkoop Street
Denver, Colorado 80202-1129

and to:

Virginia Phillips
Superfund Enforcement
U.S. EPA Region 8, 8ENF-RC
1595 Wynkoop Street
Denver, CO 80202-1129

and by email to acctsreceivable.cinwd@epa.gov, or by mail to:

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

Such notice shall reference the Site name, Site/Spill ID Number 08JE and EPA docket number for this action.

d. Penalties shall accrue as provided in this Section regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

11. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, 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 Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from performance of any other requirement of this Settlement Agreement.

VI. COVENANTS BY EPA

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

VII. RESERVATIONS OF RIGHTS BY EPA

14. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenants for Settling Party by EPA in Section VI. Notwithstanding any other provision of this Settlement

Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to:

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

15. 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.

VIII. COVENANTS BY SETTLING PARTY

16. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Montana, 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; and
- c. any claim against the United States, including any department, agency, or instrumentality of the United States, 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.

17. 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).

18. Claims Against De Micromis Parties. Settling Party agrees 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 she may have for all matters relating to the Site against any person where the person's liability to Settling Party 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.

19. The waiver in Paragraph 18, immediately above, shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

20. Claims Against Ability to Pay Parties. Settling Party agrees 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 she may have for response costs relating to the Site against any person that has entered or in the future enters into a final settlement based on limited ability to pay with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

IX. EFFECT OF SETTLEMENT/CONTRIBUTION

21. Except as provided in Paragraph 20 (Claims Against Ability to Pay 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 Paragraph 20 (Claims Against Ability to Pay Parties), each of the Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

Nothing in this 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).

22. The Parties agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does 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 Section II of this Settlement Agreement.

23. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs. The Parties further 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 Settling Party has, as of the Effective Date, resolved her liability to the United States for Past Response Costs.

24. Settling Party shall, with respect to any suit or claim brought by her for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against her 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, 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.

25. 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 Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section VI.

26. Effective upon signature of this Settlement Agreement by Settling Party, such Settling Party agrees that the time period after the date of her signature shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 23, 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 after her signature of this Settlement Agreement. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

X. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY

27. Settling Party shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (a) to the transferee regarding the Settlement Agreement and the Institutional Controls found in the Site Management Plan, attached hereto as Appendix B; and (b) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Settlement Agreement and the Institutional Controls.

28. Settling Party may Transfer any real property located at the Site only if the Proprietary Controls required by the Site Management Plan, attached hereto as Appendix B, have been recorded with respect to the real property. If, after a Transfer of the real property, the transferee fails to comply with the Site Management Plan, Settling Party shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Settling Party in obtaining compliance with the agreement. Settling Party shall reimburse the United States for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

29. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Party shall continue to comply with her obligations under the Settlement Agreement, including, but not limited to, her obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls found in the Site Management Plan, attached hereto as Appendix B, and to abide by such Institutional Controls.

XI. ACCESS AND INSTITUTIONAL CONTROLS

30. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by Settling Party:

a. Settling Party shall, commencing on the Effective Date, provide the United States, the State, and potentially responsible party who have entered or may enter into an agreement with the United States or the State for performance of response action at the Site (hereinafter "Performing Party"), and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity relating to response action at the Site, including, but not limited to, the following activities:

- (1) Monitoring, investigation, removal, remedial or other activities at the Site;
- (2) Verifying any data or information submitted to EPA or the State;

- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing response actions at or near the Site;
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XII. (Access to Information);
- (7) Assessing compliance by Settling Party and any Performing Party;
- (8) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (9) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. commencing on the Effective Date, Settling Party shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site. Such EPA determinations are set forth in the Site Management Plan attached as Appendix B; and

c. Settling Party shall:

- (1) execute and record in the appropriate land records office the Proprietary Controls as set forth in the Site Management Plan, attached hereto as Appendix B. Such Site Management Plan provides record notice that: (i) grants a right of access to conduct any activity regarding the Settlement Agreement or any activity by a Performing Party including, but not limited to, those activities listed in this Paragraph .a, and (ii) grants the right to enforce the land/water use restrictions set forth the Site Management Plan. The Proprietary Controls found in the Site Management Plan shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) any Performing Party; and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a third-party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

(2) within 15 days of the Effective Date, submit to EPA a current title insurance commitment or other evidence of title acceptable to EPA, that shows title to the land affected by the Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Party is unable to obtain release or subordination of such prior liens or encumbrances).

(3) Within 30 days of recording the Proprietary Controls found in the Site Management Plan, attached hereto as Appendix B, Settling Party shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls are to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

31. For purposes of Paragraph 30, immediately above, "best efforts" includes the payment of reasonable sums of money to obtain an agreement to release or subordinate a prior lien or encumbrance. If, within 15 days of the Effective Date, Settling Party has not obtained, pursuant to Paragraph 30.c(2), immediately above, agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls found in the Site Management Plan, attached hereto as Appendix B, Settling Party shall promptly notify EPA in writing, and shall include in that notification a summary of the steps that Settling Party has taken to attempt to comply with Paragraph 30. EPA may, as it deems appropriate, assist Settling Party in obtaining the release or subordination of a prior lien or encumbrance. Settling Party shall reimburse EPA for all costs incurred, direct or indirect, by the United States in obtaining such release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

32. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at the Site, Settling Party shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

33. Notwithstanding any provision of the Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

34. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within her possession or control or that of her contractors or agents relating to activities at the Site 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 Site.

35. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the Records submitted to EPA 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). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

b. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing Records, she shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all Records that she claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

36. No claim of confidentiality or privilege 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 Site.

XIII. RETENTION OF RECORDS

37. Until ten years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in her possession or control, or that comes into her possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

38. After the conclusion of the ten-year document retention period in the preceding Paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, Settling Party shall deliver any such Records to EPA. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other

privilege recognized by federal law. If Settling Party asserts such a privilege, she shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all Records that she claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

39. Settling Party certifies individually that, to the best of her knowledge and belief, after thorough inquiry, she has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that she 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.

XIV. NOTICES AND SUBMISSIONS

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

As to EPA:

Virginia Phillips
Superfund Enforcement
U.S. EPA Region 8, 8ENF-RC
1595 Wynkoop Street
Denver, CO 80202-1129

As to Settling Party:

Margery Metesh
37 Porters Corner Lane
Philipsburg, Montana 59858

XV. INTEGRATION/APPENDICES

41. 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" consists of the two maps of the Site; and "Appendix B" is the Site Management Plan.

XVI. PUBLIC COMMENT

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

XVII. ATTORNEY GENERAL APPROVAL

43. The Attorney General or his 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).

XVIII. EFFECTIVE DATE

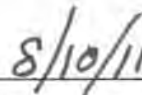
44. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 42 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

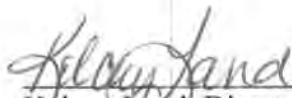
U.S. Environmental Protection Agency:



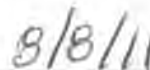
Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street,
Denver, CO 80202-1129



Date



Kelcey Land, Director
RCRA & CERCLA Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street,
Denver, CO 80202-1129



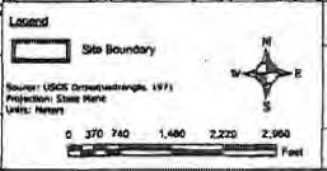
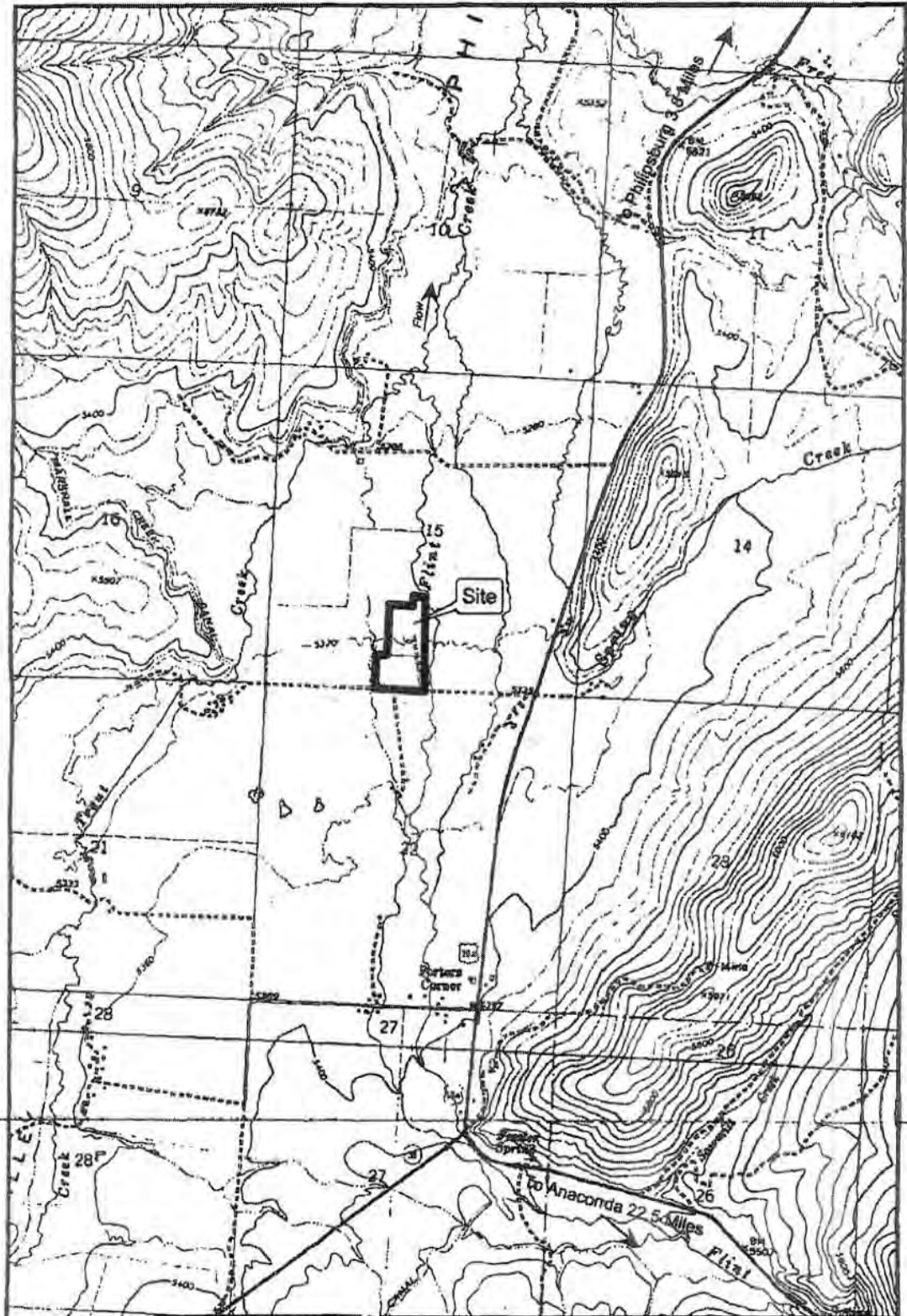
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of **insert EPA docket number**, relating to the Granite Timber Post and Pole Site, located in Granite County, Montana:

Settling Party:

Margery E Metesh
Margery Metesh
37 Porters Corner Lane
Philipsburg, Montana 59858

5/24-2011
Date



URS
CONSULTANTS

**GRANITE TIMBER POST & POLE
 GRANITE COUNTY, MONTANA**

FIGURE 1: Site Location Map

March 2007

UCS - START1
 TSD No. 0826-01



Legend		Surface Soil Sample Results	
	Sediment Sample Location		< 5 mg/kg PCP
	Monitoring Well Sample Location		5 - 48 mg/kg PCP
	Soil Boring Location		> 48 mg/kg PCP
	Grab Sample Location		Property Boundary
	Utility or Light Pole		

Source: GeoXplorer
Date: 01-01-2005

0 30 60 120 180 240 Feet

GRANITE TIMBER POST & POLE
GRANITE COUNTY, MONTANA

FIGURE 2: Sample Location Map

May 2006

UG5 - START3
TDO No. 0603-01

SITE MANAGEMENT PLAN

1. This Site Management Plan ("Plan") is to be implemented by Margaret E. Metesh, ("Respondent") as part of the EPA Region 8 Granite Timber Post and Pole Site Settlement Agreement for Recovery of Past Response Costs ("Settlement Agreement"), to which she is a signatory. The purpose of this Plan is to subject the Property described in paragraph 2, below, to the Institutional and/or Proprietary Controls ("Use Restrictions") set forth herein.

2. The Property, a tract of land containing 8.43 acres, is located within the former Granite Timber Post and Pole Site, Granite County, Montana, at the SW ¼ of section 15, T.6 N., R. 14 W., P.M.M., more specifically described as follows:

Beginning at a point which is Due West, 60.00 ft. from the ¼ corner common to sections 15 and 22, thence Due West 683.45 ft. along the section line common to sections 15 and 22, thence Due North, 581.04 ft., thence Due East, 581.00 ft., thence S.10 degrees 00'00"E., 590.00 ft. to the point of beginning.

3. A structure is located on the Property at GPS coordinates 46°16'00.20"N 113°20'2.87"W, and is referred to as the "mill building."

4. In June of 2006, EPA commenced an emergency response action that included removal of mercury contamination that was present in the mill building.

5. EPA's cleanup did not disturb the integrity of the mill building. As such, areas underneath the building were not part of the response action and a small amount of mercury contamination may remain underneath the building and/or the attached septic system.

6. Use Restrictions. EPA has determined that the Use Restrictions set forth in Exhibit A, attached hereto, are necessary with respect to the Property. As part of the Settlement Agreement, Respondent has agreed to implement such Use Restrictions.

7. Recordation - Within thirty (30) days after the Effective Date of the Settlement Agreement, Respondent shall file the Use Restrictions, attached hereto as Exhibit A, for recording, in the same manner as a deed to the Property, with the Granite County Recorder's Office.

8. Distribution of Use Restrictions - The Respondent shall distribute a file-and date-stamped copy of the recorded Use Restrictions to the Granite County Recorder and to EPA at:

U.S. Environmental Protection Agency, Region 8
Regional Institutional Control Coordinator, EPR-SR
1595 Wynkoop Street
Denver, Colorado 80202

9. Any instrument used by Respondent to convey any interest in the Property or any portion of the Property shall contain a notice of the Use Restrictions, and provide the recorded location of the Use Restrictions. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO USE RESTRICTIONS,
DATED _____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE
COUNTY RECORDER ON _____, IN [DOCUMENT or Book], _____ Page _____.

Respondent shall notify EPA, at the address provided in paragraph 8, above, within 20 days after any conveyance of an interest in any portion of the Property. Respondent's notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

Exhibit A, Notice of Use Restrictions

The purpose of this notice is to subject the Property described in paragraph a, below, to the Use Restrictions set forth herein:

- a. The Property is a tract of land, containing 8.43 acres, located in the SW $\frac{1}{4}$ of section 15, T.6 N., R.14 W., P.M.M., Granite County, Montana, more particularly described as follows:

Beginning at a point which is Due West, 60.00 ft. from the $\frac{1}{4}$ corner common to sections 15 and 22, thence Due West 683.45 ft. along the section line common to sections 15 and 22, thence Due North, 581.04 ft., thence Due East, 581.00 ft., thence S.10 degrees 00'00"E., 590.00 ft. to the point of beginning.

- b. The Property is located within the former Environmental Protection Agency ("EPA") Granite Timber Post and Pole Site ("Site").
- c. A structure is located on the Property at GPS coordinates 46°16'00.20"N 113°20'2.87"W, and is referred to as the "mill building."
- d. EPA's Site cleanup did not disturb the integrity of the mill building. As such, areas underneath the building were not part of the response action and a small amount of mercury contamination may remain underneath the building and/or the attached septic system.
- e. The current owner ("owner") of the Property, shall not disturb the mill building without following the below listed measures to prevent any potential release of mercury:
 - i. Notification and Written Workplan - owner shall notify EPA, in advance, at the following address regarding any project which may expose mercury under the mill building:

U.S. Environmental Protection Agency, Region 8
Site On-scene Coordinator, EPR-ER
1595 Wynkoop Street
Denver, Colorado 80202

Owner shall submit a written workplan to EPA describing the nature of the project and the work practices and engineering controls planned to prevent any exposure of mercury. EPA will determine the appropriate level of government oversight and will notify owner which agency will be conducting oversight of the project. In the event of any action or occurrence on or relating to the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, owner shall notify EPA of the situation and any responsive actions simultaneously with the identification of the emergency and determination of need for immediate action.

- ii. Worker Health and Safety - The U.S. Occupational Safety and Health Administration (OSHA) has regulations for workers exposed to hazardous substances, including permissible exposure limits (PELs), employee notification, monitoring methods, etc. Any activity at the Property which triggers the OSHA regulations shall be conducted in compliance with these regulations. Demolition of the mill building or removal of the floor or ball mill tray could expose mercury contaminated materials or elemental mercury.
 - iii. Receptors near the Property - owner shall take steps to ensure that persons near the Property are not exposed to contamination during any activity that disturbs the mill building floor and/or ball mill receiving tray. Any workplan for a proposed project shall describe how this will be accomplished with activities including, but not limited to, engineering controls, EPA-approved analytical methods, air monitoring, and restricting access to the Site.
 - iv. Decontamination - The workplan shall describe decontamination procedures and adequately delineate work zones and decontamination zones for any proposed project. Decontamination must be considered for workers, equipment, vehicles, or any other thing that enters into the work zone.
 - v. Handling, Transport, and Disposal – activities that may possibly disturb any mercury contamination underneath the mill building shall not allow contamination of the ground surface or any nearby buildings.
 - vi. Experienced Workers - any activity that will disturb the mill floor and/or the ball mill receiving tray shall be conducted by workers experienced with hazardous waste cleanups.
- f. Each instrument conveying any interest in the Property or any portion of the Property shall contain a notice of these Use Restrictions, and provide the recorded location of these Use Restrictions. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO USE RESTRICTIONS, DATED _____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON _____, IN [DOCUMENT or Book], _____ Page _____.

Owner shall notify EPA within 20 days after any conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

- g. Owner shall provide EPA with access to the Property at all reasonable times to conduct any activities related the former Granite Timber Post and Pole Site.
- h. EPA is a third-party beneficiary to these Use Restrictions and maintains the right to enforce the Use Restrictions without acquiring an interest in real property.