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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF  
AMERICA  
and  
STATE OF MONTANA,

Plaintiffs,

v.

SOCO WEST, INC.,

Defendant.

CIVIL ACTION NO. **CV 11-88-BLG-RFC**

**REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE**

TABLE OF CONTENTS

I. <u>BACKGROUND</u> .....	3
II. <u>JURISDICTION</u> .....	5
III. <u>PARTIES BOUND</u> .....	5
IV. <u>DEFINITIONS</u> .....	6
V. <u>GENERAL PROVISIONS</u> .....	11
VI. <u>PERFORMANCE OF THE WORK BY SOCO</u> .....	13
VII. <u>REMEDY REVIEW</u> .....	19
VIII. <u>QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS</u> .....	20
IX. <u>ACCESS AND INSTITUTIONAL CONTROLS</u> .....	21
X. <u>REPORTING REQUIREMENTS</u> .....	25
XI. <u>EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS</u> .....	27
XII. <u>PROJECT COORDINATORS AND PROJECT OFFICERS</u> .....	28
XIII. <u>PERFORMANCE GUARANTEE</u> .....	29
XIV. <u>CERTIFICATION OF COMPLETION</u> .....	33
XV. <u>EMERGENCY RESPONSE</u> .....	35
XVI. <u>PAYMENTS FOR RESPONSE COSTS</u> .....	36
XVII. <u>INDEMNIFICATION AND INSURANCE</u> .....	40
XVIII. <u>FORCE MAJEURE</u> .....	41
XIX. <u>DISPUTE RESOLUTION</u> .....	43
XX. <u>STIPULATED PENALTIES</u> .....	45
XXI. <u>COVENANTS NOT TO SUE BY THE UNITED STATES</u> .....	48
XXII. <u>COVENANTS NOT TO SUE BY THE STATE</u> .....	52
XXIII. <u>COVENANTS BY SOCO</u> .....	55
XXIV. <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u> .....	56
XXV. <u>ACCESS TO INFORMATION</u> .....	57
XXVI. <u>RETENTION OF RECORDS</u> .....	58
XXVII. <u>NOTICES AND SUBMISSIONS</u> .....	59
XXVIII. <u>EFFECTIVE DATE</u> .....	62
XXIX. <u>RETENTION OF JURISDICTION</u> .....	63
XXX. <u>APPENDICES</u> .....	63
XXXI. <u>COMMUNITY RELATIONS</u> .....	63
XXXII. <u>MODIFICATION</u> .....	63
XXXIII. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	64
XXXIV. <u>SIGNATORIES/SERVICE</u> .....	64
XXXV. <u>FINAL JUDGMENT</u> .....	65



## I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Lockwood Solvent Ground Water Plume Superfund Site in Billings, Montana together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Montana (the “State”) on February 15, 2006, of negotiations with potentially responsible parties regarding the implementation of the Remedial Design and Remedial Action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Montana Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”), as amended, §§ 75-10-701, *et seq.*, MCA.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Regional Environmental Office of Natural Resource Trustees on February 15, 2006 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendant that entered into this Consent Decree, Soco West, Inc. (“Soco”) does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.



G. The United States has reviewed the Financial Information submitted by Soco to determine whether it is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Soco has the financial capability to implement the Remedial Design and Remedial Action at the Site in accordance with the terms of this Consent Decree and pay the amounts specified in Section XVI.

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on December 1, 2000.

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, in 2002 the State commenced the Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

J. The State completed a Remedial Investigation ("RI") Report in June 2003 and completed a Feasibility Study ("FS") Report in October 2004.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA and the State published notice of the completion of the FS and of the Proposed Plan for Remedial Action on November 14, 2004, in a major local newspaper of general circulation. EPA and the State provided an opportunity for written and oral comments from the public on the Proposed Plan for Remedial Action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. The decision by EPA on the Remedial Action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), signed by both the State and EPA on August 16, 2005. The ROD includes a responsiveness summary to the public comments. Notice of the Final Plan was published in accordance with Section 117(b) of CERCLA.

M. On February 28, 2007, EPA and the Montana Department of Environmental Quality ("DEQ") entered into a Site Specific Enforcement Agreement ("SSEA") designed to foster, to the maximum extent practicable, the Federal/State partnership envisioned under CERCLA, the NCP, and CECRA with respect to the Site. The SSEA sets forth processes for the joint administration of the Site cleanup and specifies lead and support roles to EPA and DEQ with respect to various remediation activities. As a bilateral agreement intended to afford EPA and DEQ flexibility in responding to Site developments, the SSEA is intended



neither to create rights in any third party nor to alter either Agency's legal obligations under CERCLA, the NCP, CECRA, or any other applicable law. The SSEA may be modified by the mutual written agreement of EPA and DEQ, and may be terminated by either EPA or DEQ upon 30 days written notice.

N. Based on the information presently available to EPA and DEQ, EPA and DEQ believe that the Work will be properly and promptly conducted by Soco if conducted in accordance with the requirements of this Consent Decree and its Appendices.

O. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by Soco shall constitute a response action taken or ordered by the President.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607, and 9613(b). This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaint, Soco waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State, and upon Soco and its successors and assigns. Any change in ownership or corporate status of Soco including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Soco's responsibilities under this Consent Decree.

3. Soco shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing Soco with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Soco or its contractors shall

provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Soco shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Soco within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree 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 Consent Decree or in the Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Agencies” shall mean the Environmental Protection Agency and the Montana Department of Environmental Quality.

“Beall” shall mean Beall Corporation d/b/a Beall Trailers of Montana.

“CECRA” shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, §§ 75-10-701, *et seq.*, MCA.

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

“Consent Decree” shall mean this Decree and all Appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any Appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, 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.

“DEQ” shall mean the Montana Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

“DOJ” shall mean the United States Department of Justice.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 115.



“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Financial Information” shall mean those financial documents provided to EPA and MDEQ by Soco to support its inability to pay claim.

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Soco’s performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, inter alia: the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraphs 89-92 of Section XXI, or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“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 Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraphs 89-92 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Soco has agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from December 31, 2010 to the date of entry of this Consent Decree.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between December 31, 2010 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Interest” on the United States’ claims 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.

“Interest” on the State claims shall mean interest at the rate specified in Section 75-10-722, MCA, as amended.

“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.

“Operable Unit” or “OU” shall mean the geographic area within which the Work described in the ROD will be conducted.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA and DEQ pursuant to this Consent Decree and the Statement of Work (SOW).

“OU 1” or “Beall OU 1” shall mean the geographic area within Area B and Area C identified in the Record of Decision (Figure 4 of the ROD) where contaminated soil associated with the Beall property (Figure 6 of the ROD) and the groundwater plume(s) emanating from this source area (Figure 10 of the ROD) have come to be located, together with all areas in close proximity which are necessary for implementation of the Work within Areas B and C.

“OU 2” or “Soco OU 2” shall mean the geographic area within Area A identified in the Record of Decision (Figure 4 of the ROD) where contaminated soil associated with the Soco property (Figure 7 of the ROD) and the groundwater plume(s) emanating from this source area (Figure 10 of the ROD) have come to be located, together with all areas in close proximity which are necessary for implementation of the Work within Area A. Soco shall be responsible for all testing, monitoring, remediation, costs and expenses related to this OU 2 and shall finance and perform the Work in this OU in accordance with the ROD, the SOW and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Soco and approved by EPA as provided in this Consent Decree.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States, the State, and Soco.



“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through December 31, 2010, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. “Past Response Costs” shall also include all costs paid by the State at or in connection with the Site through the Effective Date including, but not limited to, costs paid by the State and settled by prior agreements.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, as set forth in Tables 2 and 3 of the ROD.

“Plaintiffs” shall mean the United States and the State of Montana.

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

“Record of Decision” or “ROD” shall mean the Record of Decision relating to the Site signed by the Regional Administrator, EPA Region 8, or his/her delegate, and the Director of the State of Montana’s Department of Environmental Quality on August 16, 2005, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by Soco to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and SOW and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by Soco to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

“Remedy” shall mean the response actions at OU 2 as set forth in the ROD (including implementation of institutional controls) and Operation and Maintenance.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Site” shall mean the Lockwood Solvent Ground Water Plume Superfund Site, encompassing approximately 580 acres, located on the outskirts of Billings, Montana in Yellowstone County, Montana, and depicted generally on the map attached as Appendix C.

“Site Specific Enforcement Agreement,” or “SSEA” shall mean the Agreement entered into between EPA and DEQ on February 28, 2007, for the Lockwood Solvent Ground Water Plume Site, including any modifications thereto.

“Site-Wide Responsibilities” shall mean the responsibilities of Soco specifically identified in the SOW that are not specific to either OU.

“Soco” shall mean Soco West, Inc., formerly known as Brenntag West, Inc.

“State” shall mean the State of Montana, including all of its departments, agencies, and instrumentalities.

“State Future Response Costs” shall mean those costs incurred when the State is acting as Lead Agency under the terms of the Site Specific Enforcement Agreement (“SSEA”) between the United States and the State which are not reimbursed by the United States pursuant to the terms and conditions of a Cooperative Agreement between the United States and the State.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by Soco to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America.

“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), 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).



“Work” shall mean all activities Soco is required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

#### V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by Soco, to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Soco as provided in this Consent Decree.

6. Commitments by Soco.

a. Soco shall be responsible for OU 2. Soco shall finance and perform the Work for OU 2 in accordance with this Consent Decree, the ROD, the SOW, and all work plans, standards, specifications, and schedules set forth herein or developed by Soco and approved by EPA and/or DEQ pursuant to this Consent Decree. Soco shall also reimburse the United States and the State for Past Response Costs and Future Response Costs as provided in this Consent Decree. Soco is not responsible to finance or perform the Work within OU 1.

b. Soco shall be responsible for the Site-Wide Responsibilities that are identified by the SOW, but no other Site-Wide activities. Examples of Site-Wide Responsibilities include the development of all information (descriptions, data, modeling and rationale) necessary to support a petition for a Controlled Ground Water Area and the development and implementation of a long-term Community Awareness/Education program informing the public of the potential risks associated with implementation of the remedial design and remedial action.

7. Compliance With Applicable Law. All activities undertaken by Soco pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Soco must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA or DEQ, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the



Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Soco shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Soco may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by Soco that is located within the Site, within twenty days (20) after the entry of this Consent Decree, Soco shall submit to EPA for review and approval a notice to be filed with the Clerk and Recorder's Office, Yellowstone County, State of Montana, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on August 16, 2005, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Soco shall record the notice(s) within ten (10) days of EPA's approval of the notice(s). Soco shall provide EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, Soco shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). Soco shall also send a copy of the conveyance document to EPA and the State.

c. In the event of any such conveyance, Soco's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional



controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by Soco. In no event shall the conveyance release or otherwise affect the liability of Soco to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SOCO

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed within OU 2 by Soco pursuant to Sections VI (Performance of the Work by Soco), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval by EPA after reasonable opportunity for review and comment by the DEQ. Within 10 days after the lodging of this Consent Decree, Soco shall notify EPA and DEQ in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for OU 2. With respect to any contractor proposed to be Supervising Contractor, Soco shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. For OU 2, EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Soco proposes to change a Supervising Contractor, Soco shall give such notice to EPA and DEQ and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Soco in writing. Soco shall submit to EPA and DEQ a list of contractors, including the qualifications of each contractor that would be acceptable to it within 60 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Soco may select any contractor from that list that is not



disapproved and shall notify EPA and DEQ of the name of the contractor selected within 30 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Soco from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Soco shall be entitled to relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

a. There shall be a Remedial Design Work Plan prepared by Soco for OU 2. Within 60 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Soco shall submit to EPA and DEQ a work plan for the design of the Remedial Action within OU 2 ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy within OU 2 as set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. The RD Work Plan shall address any Site-wide responsibilities described in this Consent Decree or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 60 days after EPA's issuance of an authorization to proceed with the Remedial Design Work Plan, Soco shall submit to EPA and DEQ a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all Remedial Design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of the (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a Construction Quality Assurance Plan; (3) a treatability study; (4) a Pre-design Work Plan; (5) a preliminary design submittal; (6) an intermediate design submittal; and (7) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by DEQ, and submittal of the Health and Safety Plan for all field activities to EPA and DEQ, Soco shall



implement the RD Work Plan for OU 2. Soco shall submit to EPA and DEQ all plans, submittals and other deliverables required under the approved Remedial Design Work Plan for OU 2 in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Soco shall not commence further Remedial Design activities at the Site or within OU 2 prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor for OU 2, to conduct a quality assurance program during the construction phase of the project.

## 12. Remedial Action.

a. Within 60 days after the approval of the final design submittal, Soco shall submit to EPA and DEQ a work plan for the performance of the Remedial Action within OU 2 ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan for OU 2 shall be incorporated into and become enforceable under this Consent Decree. At the same time as it submit the Remedial Action Work Plan, Soco shall submit to EPA and DEQ a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational



Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) tentative formulation of the Remedial Action team; (9) construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of Soco's Remedial Action Project Team (including, but not limited to, its Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by DEQ, Soco shall implement the activities required under the Remedial Action Work Plan for OU 2. Soco shall submit to EPA and DEQ all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Soco shall not commence physical Remedial Action activities at the Site or within OU 2 prior to approval of the Remedial Action Work Plan.

13. Soco shall continue to implement the Remedial Action and O&M within OU 2 until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA, after reasonable opportunity for review and comment by DEQ, determines that modification to the work specified in the SOW and/or in work plans developed for OU 2 pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy within OU 2 as set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.



b. For the purposes of this Paragraph 14 and Paragraphs 51 and 52 only, the “scope of the remedy selected in the ROD” is set forth below.

(1) Soco Operable Unit (OU2): Low temperature thermal treatment of accessible contaminated vadose and saturated soil that exceeds OU2 soil performance standards; soil excavation from ground surface to the bottom of the fine-grain silty sand unit (averaging approximately 14 feet deep); backfilling of excavation areas with treated soil, where feasible; construction and operation of a soil vapor extraction system to treat inaccessible contaminated vadose soil from the ground surface to the water table (approximately 10 feet deep); treatment of thermal treatment vapor discharge and soil vapor extraction vapor discharge as necessary to comply with air quality standards; implementation of in-situ chemical oxidation to treat inaccessible contaminated saturated soil and other contaminated soil and contaminated groundwater areas where contaminant sources are known or suspected, as described in the SOW; additional sampling to fully delineate areas where contaminant concentrations are above cleanup levels; construction and operation of a treatment/containment barrier to treat contaminated groundwater throughout the saturated thickness (approximately 25 feet); implementation of enhanced bioremediation systems to treat contaminated groundwater in OU 2 downgradient of the AS/SVE system and also downgradient of the treatment/containment barrier; batch delivery of amendments to the aquifer repeated as necessary until cleanup levels are achieved throughout the plume; conducting groundwater and system performance monitoring using the network of existing wells and new wells if necessary; and

(2) Site-wide Responsibilities: Site-wide activities that are specified in the SOW as defined in Paragraph 4. Examples of these site-wide responsibilities are identified in Paragraph 6.b of this Consent Decree.

c. If Soco objects to any modification determined by EPA to be necessary for OU 2 pursuant to this Paragraph, Soco may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 69 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Soco shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Soco acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. a. Soco shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator and the DEQ Project Officer of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) Soco shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Soco shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by Soco following the award of the contract for Remedial Action construction. Soco shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Soco shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Soco shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.



## VII. REMEDY REVIEW

17. Periodic Review. Soco shall conduct any studies and investigations as requested by EPA or DEQ, in order to permit EPA, in consultation with DEQ, to conduct reviews of whether the Remedial Action in OU 2 is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA, in consultation with DEQ, determines at any time that the Remedial Action within OU 2 is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Soco and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the comment period.

20. Soco's Obligation To Perform Further Response Actions. If EPA selects further response actions for OU 2, Soco shall undertake such further response actions to the extent that the reopener conditions in Paragraph 84 or Paragraph 85 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Soco may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 84 or Paragraph 85 of Section XXI (Covenants Not To Sue by the United States) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 69 (record review).

21. Submissions of Plans. If Soco is required to perform the further response actions pursuant to Paragraph 20, it shall submit a plan for such work within OU 2 to EPA and DEQ for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Soco) and shall implement the plan approved by EPA, in consultation with DEQ, in accordance with the provisions of this Decree.



### VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Soco shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001, reissued May, 2006) “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Soco of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Soco shall submit to EPA for approval, after a reasonable opportunity for review and comment by DEQ, a Quality Assurance Project Plan (“QAPP”) that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Soco shall ensure that EPA and DEQ personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Soco in implementing this Consent Decree. In addition, Soco shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Soco shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the “Contract Lab Program Statement of Work for Inorganic Analysis,” method ILM05.3 dated March 2004, and the “Contract Lab Program Statement of Work for Organic Analysis,” OLM04.3 method dated March 2003, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by DEQ, Soco may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Soco shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Soco shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-2004, “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. Soco shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, Soco shall allow split or duplicate samples to be taken by EPA, DEQ, or its authorized representatives. Soco shall notify EPA and DEQ not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and DEQ shall have the right to take any additional samples that EPA or DEQ deem necessary. Upon request, EPA and/or DEQ shall allow Soco to take split or duplicate samples of any samples taken as part of the Agencies' oversight of Soco's implementation of the Work.

24. Soco shall submit to EPA and DEQ 2 copies (one hard copy and one in electronic form) of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Soco with respect to the Site and/or the implementation of this Consent Decree unless EPA and DEQ agree otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, CECRA, RCRA and any other applicable statutes or regulations.

#### IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by Soco, Soco shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and the State, its representatives and contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States and the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;

- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 89 of this Consent Decree;
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Soco or its agents, consistent with Section XXV (Access to Information);
- (9) Assessing Soco's compliance with this Consent Decree; and
- (10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to those set forth in Appendix D; and

c. if EPA and DEQ so request, execute and record in the Clerk and Recorder's Office of Yellowstone County, State of Montana, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26.b of this Consent Decree, or other restrictions that EPA and DEQ determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Soco shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA and DEQ: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate grantees. Soco shall, within 45 days of EPA's request, submit to EPA and DEQ for review and approval with respect to such property, a draft easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Montana.

Within 15 days of EPA's approval and acceptance of the easement, Soco shall record the easement with the Clerk and Recorder's Office of Yellowstone



County. Within 30 days of recording the easement, Soco shall provide EPA and DEQ with a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255. Easements will be in effect until EPA and DEQ determine they are no longer needed to ensure protection of human health. After Certification of Completion of the Work, Soco may request Agency approval to remove the Easement from the property consistent with Section 75-10-727, MCA. EPA and DEQ shall review the request and provide Soco with a decision within 120 days from receipt of the request.

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of Soco, Soco shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Soco, as well as for the United States on behalf of EPA, and the State on behalf of DEQ, as well as its representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree;

b. an agreement, enforceable by Soco, the United States, and the State, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to those set forth in Appendix D; and

c. if EPA and DEQ so request, the execution and recordation in the Clerk and Recorder's Office of Yellowstone County, State of Montana, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26.b of this Consent Decree, or other restrictions that EPA and DEQ determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions 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, and/or



(iii) other appropriate grantees. Soco shall, within 45 days of EPA's request, submit to EPA and DEQ for review and approval with respect to such property, a draft easement in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Montana.

Within 15 days of EPA's approval and acceptance of the easement Soco shall record the easement with the Clerk and Recorder's Office of Yellowstone County. Within 30 days of recording the easement, Soco shall provide EPA and DEQ with a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255. Easements will be in effect until EPA and DEQ determine they are no longer needed to ensure protection of human health. After Certification of Completion of the Work, Soco may request Agency approval to remove the Easement from the property consistent with Section 75-10-727, MCA. EPA and DEQ shall review the request and provide Soco with a decision within 120 days from receipt of the request.

28. For purposes of Paragraphs 26 and 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 27.a or 27.b of this Consent Decree are not obtained within 45 days of the date of EPA's and DEQ's request, (b) any access easements or restrictive easements required by Paragraph 27.c of this Consent Decree are not submitted to EPA and DEQ in draft form within 45 days of the date of EPA's and DEQ's request or (c) Soco is unable to obtain an agreement pursuant to Paragraph 26.c.(i) or Paragraph 27.c.(i) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within 45 days of the date of entry of this Consent Decree, Soco shall promptly notify the United States and the State in writing, and shall include in that notification a summary of the steps that Soco has taken to attempt to comply with Paragraphs 26 or 27 of this Consent Decree. The United States and/or the State may, as either deem appropriate, assist Soco in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Soco shall reimburse the United States and/or the State in accordance with the procedures in Section XVI (Payments for Response Costs), for



all costs incurred, direct or indirect, by the United States and/or the State in obtaining such access, land/water use restrictions, and/or the 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.

29. If EPA and the State determine that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Soco shall cooperate with EPA's and/or DEQ's efforts to secure such governmental controls. In addition to deed notices/deed restrictions, Soco shall, subject to EPA and DEQ approval, develop and implement the following institutional controls: 1) Petition for Controlled Ground Water Area; and 2) Community Awareness/Education Program for the Site in accordance with the ROD, the SOW and this Consent Decree.

30. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, CECRA, RCRA and any other applicable statute or regulations.

#### X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Soco shall submit to EPA and DEQ 2 copies (one hard copy and one in electronic form) of written progress reports applicable to OU 2. These progress reports shall be submitted each month for the first six months following approval of the Remedial Design Work Plan, and each quarter thereafter during the remedial design phase of the Work; and each month for the first six months following approval of the Remedial Action Work Plan, and each quarter thereafter during the remedial action phase of the Work. These progress reports shall: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month/quarter; (b) identify results of sampling and tests and all other data received or generated by Soco or its contractors or agents in the previous month/quarter; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month/quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including updates to critical path diagrams, Gantt charts and/or Pert charts; (e) include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts





made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Soco has proposed; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month/quarter and those to be undertaken in the next six weeks. Soco shall submit these progress reports to EPA and DEQ by the tenth day of every month/quarter following the lodging of this Consent Decree until EPA notifies Soco pursuant to Paragraph 52.b of Section XIV (Certification of Completion). If requested, Soco shall also provide briefings for EPA and DEQ to discuss the progress of the Work.

32. Soco shall notify EPA and DEQ of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Soco is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Soco shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 8, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 30 days of the onset of such an event, Soco shall furnish to EPA and DEQ a written report, signed by Soco's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Soco shall submit a report setting forth all actions taken in response thereto.

35. For OU 2, Soco shall submit 2 copies (one hard copy and one in electronic form) of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Soco shall simultaneously submit 3 copies of all such plans, reports and data to DEQ. Upon request by EPA, Soco shall submit in electronic form all portions of any report or other deliverable Soco is required to submit pursuant to the provisions of this Consent Decree.



36. All reports and other documents submitted by Soco to EPA and DEQ (other than the monthly progress reports referred to above) which purport to document Soco's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Soco.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Soco modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Soco at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37.a, b, or c, Soco shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37.c and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 37.d, Soco shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37.d, Soco shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any



non-deficient portion of a submission shall not relieve Soco of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Soco to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Soco shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Soco shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Soco invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA and DEQ under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA and DEQ under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

## XII. PROJECT COORDINATORS AND PROJECT OFFICERS

43. Soco, EPA, and DEQ have each previously identified their designated Project Coordinators and (in DEQ's case) Project Officer. EPA and DEQ may in the future also designate Alternate Project Coordinators. If a Project Coordinator or Project Officer initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Soco's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Soco's Project Coordinators shall not be an attorney for Soco in this matter. Soco may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.



44. The Agencies may designate other representatives, including, but not limited to, EPA and DEQ employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator, and (when acting as lead agency pursuant to the SSEA) DEQ's Project Officer, shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator, and (when acting as lead agency pursuant to the SSEA) DEQ's Project Officer, shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. EPA's Project Coordinator, DEQ's Project Officer, and Soco's Project Coordinator will meet, at a minimum, biannually.

### XIII. PERFORMANCE GUARANTEE

46. In order to ensure the full and final completion of the Work, Soco shall establish and maintain a Performance Guarantee for the benefit of EPA for the costs of performing the Work (including the Site-Wide Responsibilities) in OU 2. The "Estimated Cost of the Work" shall be \$6,960,000. The Performance Guarantee shall be in one or more of the following forms, which must be satisfactory in form and substance to EPA and DEQ:

a. a surety bond unconditionally guaranteeing payment for and performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency; or

c. a trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency.



47. Soco has selected, and EPA, after consultation with DEQ, has approved, as an initial Performance Guarantee a trust fund established for the benefit of EPA pursuant to Paragraph 46.c, in the form attached hereto as Appendix F. Within ten days after entry of this Consent Decree, Soco shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix F, and such Performance Guarantee(s) shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, Soco shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to Maureen O'Reilly, and to the United States and EPA as specified in Section XXVII (Notices and Submissions).

48. In the event that EPA, after consultation with DEQ, determines at any time that a Performance Guarantee provided by Soco pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Soco becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Soco, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of Soco becoming aware of such information, shall obtain and present to EPA and DEQ for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraphs 46 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Soco shall follow the procedures set forth in Paragraph 50.b of this Consent Decree. Soco's inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Soco to complete the Work in strict accordance with the terms hereof.

49. The commencement of any Work Takeover pursuant to Paragraph 88 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 46 a, b, c, d, or f, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such



Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, Soco shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

50. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Soco believes that the estimated cost to complete the remaining Work that is subject to its Performance Guarantee(s) has diminished below the amount set forth in Paragraph 46 above, it may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA and DEQ in writing to request a reduction in the amount of the Performance Guarantee(s) provided pursuant to this Section so that the amount of the Performance Guarantee(s) is equal to the estimated cost of the remaining Work to be performed. Soco shall submit a written proposal for such reduction to EPA and DEQ that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Soco shall follow the procedures set forth in Paragraph 50.c of this Consent Decree. If EPA, after consultation with DEQ, decides to accept such a proposal, EPA shall notify Soco of such decision in writing. After receiving EPA's written acceptance, Soco may reduce the amount of its Performance Guarantee(s) in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Soco may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 48 or 50.b of this Consent Decree.

b. Change of Form of Performance Guarantee. If, after entry of this Consent Decree, Soco desires to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Soco may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA and DEQ in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 50.c of this Consent Decree. Any decision made by EPA, after consultation with DEQ, on a petition submitted under this subparagraph b shall be



made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Soco pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

c. Soco shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA and DEQ which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Soco shall submit such proposed revised or alternative form of Performance Guarantee to Maureen O'Reilly in accordance with Section XXVII (Notices and Submissions) of this Consent Decree. EPA shall notify Soco in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Soco shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Soco shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the individuals specified in Section XXVII (Notices and Submissions) of this Consent Decree within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee.

d. Release of Performance Guarantee. If Soco receives written notice from EPA in accordance with Paragraph 52 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Soco in writing, Soco may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Soco shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Soco may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.



XIV. CERTIFICATION OF COMPLETION

51. Completion of the Remedial Action.

a. Soco shall fully perform the Remedial Action and attain Performance Standards within OU 2. Soco shall certify completion of the Remedial Action within OU 2 in accordance with this Consent Decree. Within 90 days after Soco concludes that the Remedial Action has been fully performed and the Performance Standards have been attained within OU 2, Soco shall schedule and conduct a pre-certification inspection to be attended by Soco, EPA, and DEQ. If, after the pre-certification inspection, Soco still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and Soco's Project Coordinator shall state that the Remedial Action within OU 2 has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Soco or Soco's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission 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.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by DEQ, determines that the Remedial Action within OU 2 or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Soco in writing of the activities within OU 2 that must be undertaken by Soco pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Soco to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Soco to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).



Soco shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by DEQ, that the Remedial Action within OU 2 has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Soco. Upon request, EPA and the State will provide certification in a form acceptable for filing with the Clerk and Recorder's Office of Yellowstone County. If Soco completes the Remedial Action and achieves Performance Standards, this certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Sections XXI and XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Soco's obligations under this Consent Decree.

52. Completion of the Work.

a. Soco shall fully perform all phases of the Work within OU 2 (including O&M) and perform and pay for the Site-Wide Responsibilities as defined here and in the SOW. Soco shall certify completion of the Work within OU 2 in accordance with this Consent Decree. Within 90 days after Soco concludes that all phases of the Work (including O & M), have been fully performed within OU 2, Soco shall schedule and conduct a pre-certification inspection to be attended by Soco, EPA, and DEQ. If, after the pre-certification inspection, Soco still believes that the Work has been fully performed within OU 2, Soco shall submit a written report by a registered professional engineer stating that the Work within the OU has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of Soco or Soco's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work within OU 2 has not been completed in accordance with this Consent Decree, EPA will notify



Soco in writing of the activities within OU 2 that must be undertaken by Soco pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Soco to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Soco to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Soco shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Soco and after a reasonable opportunity for review and comment by the State, that the Work within OU 2 has been performed in accordance with this Consent Decree, EPA will so notify Soco in writing. Upon request, EPA and the State shall provide certification in a form acceptable for filing with the Clerk and Recorder's Office of Yellowstone County, Montana.

#### XV. EMERGENCY RESPONSE

53. Soco shall be responsible for Emergency Response within OU 2. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Soco shall, subject to Paragraph 54, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA Project Coordinator, or, if the Project Coordinator is unavailable, the EPA Alternate Project Coordinator. If neither of these persons is available, Soco shall notify the EPA Emergency Response Unit, Region 8. In addition, Soco shall notify DEQ's Project Officer. Soco shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Soco fails to take appropriate response action as required by this Section, and EPA and DEQ take such action instead, Soco shall reimburse EPA and DEQ all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).



54. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States and the State: a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI and XXII (Covenants Not to Sue by Plaintiffs).

#### XVI. PAYMENTS FOR RESPONSE COSTS

##### 55. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Soco shall pay to EPA \$750,000.00 for its agreed upon share of Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2011V00067, EPA Site/Spill ID number 08AK, and DOJ Case Number 90-11-2-08777. Payment shall be made in accordance with instructions provided to Soco by the Financial Litigation Unit of the United States Attorney's Office for the District of Montana following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Soco shall send notice that payment has been made to the United States to EPA (including the Regional Financial Management Officer) and DEQ in accordance with Section XXVII (Notices and Submissions).

c. The total amount to be paid by Soco pursuant to Paragraph 55.a shall be deposited in the EPA Hazardous Substance Superfund.

d. There are no past costs due and owing to the State of Montana.

##### 56. Payments for Future Response Costs.

a. Soco shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. Soco shall be responsible for Future Response Costs related to OU 2 and for Future Oversight Costs related to Site-wide Responsibilities. On a periodic basis the United States will send Soco a bill requiring payment that includes a cost summary. Soco shall make all payments within 30 days of Soco's receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. Soco 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 making payment and EPA Site/Spill ID number 08AK, and DOJ Case Number 90-11-2-08777. EPA will deposit all funds it receives into a site-specific Special Account. Soco shall send the check(s) or make payments by one of the following options:

Overnight Express Mail:

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 Payment:

WWW.PAY.GOV  
Enter "sfo 1.1" in the search field

b. At the time of payment, Soco shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).



c. Soco shall reimburse the State for all State Future Response Costs independently incurred by the State related to OU 2 and for State Future Response Costs for Site-Wide Responsibilities that are not inconsistent with the National Contingency Plan. State Future Response Costs shall be limited to those costs incurred when the State is acting as Lead Agency under the terms of the Site Specific Enforcement Agreement ("SSEA") between the United States and the State. State Future Response Costs shall not include costs incurred that are reimbursed by the United States pursuant to the terms and conditions of a Cooperative Agreement or costs incurred that are the subject of a dispute between the United States and the State under the SSEA. The State will on a periodic basis send Soco a bill requiring payment supported by cost documentation which shall include: (a) State contractor invoices; (b) any existing contractor progress reports; and (c) SABHRS Report 106 information or its equivalent. Soco shall make all payments within 30 days of Soco's receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. Soco shall make all payments to the State required by this Paragraph in the form of a certified or cashier's check or checks made payable to State of Montana, Department of Environmental Quality, in reimbursement of State Future Response Costs independently incurred by the State related to OU 2 and State Future Response Costs for Site-Wide Responsibilities. Soco shall send the certified or cashier's check(s) to Department of Environmental Quality, Financial Services, Metcalf Building, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Reference shall be made to the Lockwood Solvent Ground Water Plume Site, Cost Reimbursement. Soco may also make payment by electronic funds transfer. Soco shall contact the DEQ Project Officer at least 48 hours prior to initiating a transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers. If the DEQ Project Officer is unavailable, Soco shall contact DEQ Legal Counsel identified in Section XXVII (Notices and Submissions).

57. Soco may contest payment of any Future Response Costs under Paragraph 56 if it determines that the United States and/or the State has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill (or receipt of information related to the bill) and must be sent to the United States and the State pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Soco shall within the 30 day period pay all uncontested Future Response Costs to the



United States and/or the State in the manner described in Paragraph 56. Simultaneously, Soco shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Soco shall send to the United States and the State, as provided in Section XXVII (Notices and Submissions), 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, Soco shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States and/or the State prevail in the dispute, within 30 days of the resolution of the dispute, Soco shall pay the sums due (with accrued interest) to the United States and/or the State in the manner described in Paragraph 56. If Soco prevails concerning any aspect of the contested costs, Soco shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States and/or the State in the manner described in Paragraph 56; Soco 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 XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Soco's obligation to reimburse the United States and/or the State for its Future Response Costs.

58. Interest. In the event that the payments required by Paragraph 55 are not made within 30 days of the Effective Date or the payments required by Paragraph 56 are not made within 30 days of Soco's receipt of the bill, Soco shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Soco's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Soco's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX. Soco shall make all payments required by this Paragraph in the manner described in Paragraph 56.



XVII. INDEMNIFICATION AND INSURANCE

59. Soco's Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Soco as the Agencies' authorized representative under Section 104(e) of CERCLA. Soco shall indemnify, save and hold harmless the United States and the State, and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Soco, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Soco as the Agencies' authorized representative under Section 104(e) of CERCLA. Further, Soco agrees to pay the United States and the State all costs it incurs 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 and the State based on negligent or other wrongful acts or omissions of Soco, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Soco in carrying out activities pursuant to this Consent Decree. Neither Soco nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Soco notice of any claim for which either the United States or the State plan to seek indemnification pursuant to Paragraph 59. Notwithstanding any other provision in this section, no claim that is subject to indemnification by Soco may be settled by the United States or the State without prior notice and consultation.

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



arrangement between Soco and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

61. No later than 15 days before commencing any on-site Work, Soco shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 51.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of five million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Soco shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Soco in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Soco shall provide to EPA and DEQ certificates of such insurance and a copy of each insurance policy. Each insurance policy shall contain a clause providing that it will not be canceled by the insurance company without 30 days written notice to EPA and DEQ of intention to cancel. If Soco demonstrates by evidence satisfactory to EPA and DEQ that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Soco needs to provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XVIII. FORCE MAJEURE

62. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Soco, of any entity controlled by Soco, or of Soco's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Soco's best efforts to fulfill the obligation. The requirement that Soco exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (1) as it is occurring; and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Soco shall notify (by e-mail, FAX or telephone) the EPA Project Coordinator or, in his or her absence, the EPA Alternate Project Coordinator or, in



the event both of EPA's designated representatives are unavailable, the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8, within 24 hours of when Soco first knew that the event might cause a delay. Notice shall also be provided to the DEQ Project Officer. Within 5 days thereafter, Soco shall provide in writing to EPA and DEQ 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; Soco's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Soco, such event may cause or contribute to an endangerment to public health, welfare or the environment. Soco shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Soco 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. Soco shall be deemed to know of any circumstance of which Soco, any entity controlled by Soco, or Soco's contractors knew or should have known.

64. If EPA, after consultation with the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree 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 Soco in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Soco in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

65. If Soco elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Soco shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Soco complied with the requirements of Paragraphs 62 and 63, above. If Soco



carries this burden, the delay at issue shall be deemed not to be a violation by Soco of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XIX. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

67. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

#### 68. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Agencies shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Soco invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Soco. The Statement of Position shall specify Soco's position as to whether formal dispute resolution should proceed under Paragraph 69 or Paragraph 70.

b. Within 30 days after receipt of Soco's Statement of Position, EPA, after consultation with the State, will serve on Soco its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraphs 69 or 70. Within 20 days after receipt of EPA's Statement of Position, Soco may submit a Reply.

c. If there is disagreement between EPA and Soco as to whether dispute resolution should proceed under Paragraphs 69 or 70, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA



to be applicable. However, if Soco ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 69 and 70.

69. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA and DEQ under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Soco regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8 ("ARA EPR"), will issue a final administrative decision resolving a dispute based on the administrative record described in Paragraph 69.a. for matters regarding the adequacy of any response actions taken pursuant to this Consent Decree and related matters. The Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8 ("ARA ECEJ"), will issue a final administrative decision resolving a dispute based on the administrative record described in Paragraph 69.a. for issues regarding costs, billings, financial assurance and related matters. These decisions shall be binding upon Soco, subject only to the right to seek judicial review pursuant to Paragraph 69.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 69.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Soco with the Court and served on all Parties within 30 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States or the State may file a response to Soco's motion.



d. In proceedings on any dispute governed by this Paragraph, Soco shall have the burden of demonstrating that the decision of the above-named Assistant Regional Administrator is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 69.a.

70. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of Soco's Statement of Position submitted pursuant to Paragraph 68, the ARA EPR will issue a final decision resolving a dispute regarding technical issues; and the ARA ECEJ will issue a final decision resolving a dispute regarding costs, billings, financial assurance and related matters. This final decision shall be binding on Soco unless, within 30 days of receipt of the decision, Soco files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Soco's motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

71. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Soco under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 79. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Soco does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

#### XX. STIPULATED PENALTIES

72. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:



<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$2,000	1 <sup>st</sup> through 14 <sup>th</sup> day
\$4,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$6,000	31 <sup>st</sup> day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Soco), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payments for Response Costs).

73. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$1,500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$2,500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$3,500	31 <sup>st</sup> day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 72.b of this Consent Decree.

74. In the event that EPA or DEQ assumes performance of a portion or all of the Work in OU 2 pursuant to Paragraph 89 (Work Takeover) of Section XXI (Covenants Not to Sue by the United States), Soco shall be liable for, in addition to the Response Costs referenced in Paragraph 91, a stipulated penalty in the amount of \$500,000.

75. 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 XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Soco of any deficiency; (2) with respect to a decision by the Assistant Regional Administrator, EPA Region 8, under Paragraphs 69.b or 70.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Soco's reply to EPA's Statement of Position is received until the date that the Assistant Regional Administrator issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

76. Following EPA's determination that Soco has failed to comply with a requirement of this Consent Decree, EPA may give Soco written notification of the same and describe the noncompliance and EPA and DEQ may send Soco a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Soco of a violation.

77. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days of Soco's receipt from EPA of a demand for payment of the penalties, unless Soco invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid and notices provided in accordance with the procedures set forth in Paragraph 55.a and .b. All payments to the State under this Section shall be paid and mailed as provided in Section 56.c.

78. The payment of penalties shall not alter in any way Soco's obligations to complete the performance of the Work required under this Consent Decree.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and DEQ within 15 days of the agreement or the receipt of EPA's decision or order;



b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Soco shall pay all accrued penalties determined by the Court to be owed to EPA and DEQ within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Soco shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as it continues to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and DEQ or to Soco to the extent that it prevails.

80. If Soco fails to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Soco shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 76.

81. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Soco's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

82. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### XXI. COVENANTS NOT TO SUE BY THE UNITED STATES

83. In consideration of the actions that will be performed and the payments that will be made by Soco under the terms of the Consent Decree, and except as specifically provided in Paragraphs 84, 85, and 87 of this Section, the United States covenants not to sue or to take administrative action against Soco pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payment required by Paragraph 55.a of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section



XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Soco of its obligations under this Consent Decree. These covenants not to sue extend only to Soco and do not extend to any other person.

84. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Soco:

- a. to perform further response actions relating to OU2, or
- b. to reimburse the United States for additional costs of response if, prior Certification of Completion of the Remedial Action:
  - (1) conditions at OU2, previously unknown to EPA, are discovered, or
  - (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action at OU2 is not protective of human health or the environment.

85. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Soco:

- a. to perform further response actions relating to OU2, or
- b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:
  - (1) conditions at OU2, previously unknown to EPA, are discovered, or
  - (2) information, previously unknown to EPA, is received, in whole or in part,



and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action at OU2 is not protective of human health or the environment.

86. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 85, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

87. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Soco with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Soco with respect to:

- a. claims based on a failure by Soco to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability arising after signature of this Consent Decree by Soco, based upon Soco's ownership or operation of the Site, or upon Soco's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to







achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans); and

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

88. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Soco, or the financial certification made by Soco in Paragraph 113, is false or, in an material respect, inaccurate.

89. Work Takeover. In the event EPA determines that Soco has within OU 2 (i) ceased implementation of any portion of the Work, or (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Soco. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Soco a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice. If EPA determines that an emergency condition is present at OU 2, EPA may provide Soco a period of less than 10 days to remedy the circumstances giving rise to EPA’s Work Takeover Notice.

90. If, after expiration of the 10-day notice period, or an expedited time frame, as specified in Paragraph 89, Soco has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA and/or DEQ deem necessary (“Work Takeover”). EPA shall notify Soco in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 90.

91. Soco may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 69, to dispute EPA's implementation of a Work Takeover under Paragraph 89. However, notwithstanding Soco’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 89 until the earlier of (i) the date that Soco remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX



(Dispute Resolution), Paragraph 69, requiring EPA to terminate such Work Takeover.

92. After commencement and for the duration of any Work Takeover, EPA and DEQ shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 49 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and Soco fails to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 49, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Soco shall pay pursuant to Section XVI (Payment for Response Costs).

#### XXII. COVENANTS NOT TO SUE BY THE STATE

93. In consideration of the actions that will be performed and the payments that will be made by Soco under the terms of this Consent Decree, and except as specifically provided in Paragraphs 94, 95, and 97 of this Section, the State of Montana covenants not to sue or to take administrative action against Soco pursuant to Sections 106 and 107(a) of CERCLA, Section 7003 of RCRA or Sections 711, 715(2)(a), and 722 of CECRA, for recovery of response costs or injunctive relief at the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by DEQ of the payment required by Paragraph 55.e of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Soco of its obligations under this Consent Decree. These covenants not to sue extend only to Soco and do not extend to any other person.

94. State's Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Soco:

- a. to perform further response actions relating to OU2; or
- b. to reimburse the State for additional costs of response if, prior to Certification of Completion of the Remedial Action:



(1) Conditions at OU2, previously unknown to the State, are discovered, or

(2) Information, previously unknown to the State, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action at OU2 is not protective of human health or the environment.

95. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Soco:

- a. to perform further response actions relating to OU2; or
- b. to reimburse the State for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(1) Conditions at OU2, previously unknown to the State, are discovered, or

(2) Information, previously unknown to the State, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action at OU2 is not protective of human health or the environment.

96. Information and Conditions Known to the State. For purposes of Paragraph 94, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 95, the information and conditions known to the State shall include only that information and those conditions known to the State as of the date of EPA's Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record or in any information received by the State pursuant to the requirements of this Consent Decree prior to EPA's Certification of Completion of the Remedial Action.



97. State's General Reservations of Rights. The State's covenants set forth in Paragraph 93 do not pertain to any matters other than those expressly specified in that Paragraph. The State reserves, and this Consent Decree is without prejudice to, all rights against Soco with respect to all other matters, including but not limited to, the following:

- a. claims to enforce this Consent Decree based on a failure by Soco to meet a requirement of this Consent Decree;
- b. claims for liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. claims for liability arising after signature of this Consent Decree by Soco based upon Soco's ownership or operation of the Site, or upon Soco's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by the EPA.
- d. claims for liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. claims for criminal liability;
- f. claims for liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. claims for liability, prior to Certification of Completion of the Remedial Action, for additional response actions that the State determines are necessary to achieve Performance Standards, but cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans).

98. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Soco, or the financial certification made by Soco in Paragraph 113, is false or, in an material respect, inaccurate.



99. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserves all rights to take any and all response actions authorized by law.

### XXIII. COVENANTS BY SOCO

100. Covenant Not to Sue. Subject to the reservations in Paragraph 99, Soco hereby covenants not to sue and agree not to assert any claims or causes of action against the United States and the State with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 or 113 related to the Site, or

c. any direct or indirect claim related to this Site for reimbursement from the Environmental Quality Protection Fund (established pursuant to Section 75-10-704, MCA), the Orphan Share Account (established pursuant to Section 75-10-743, MCA), or other provisions of law, or

d. any claims 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.

These covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 84, 85, 87.b - d or 87.g - h, or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 94, 95, 97.b - d or 97.g, but only to the extent that Soco's claims arise from the same response action, response costs, or damages that the United States and the State are seeking pursuant to the applicable reservation.

101. Soco reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person,



would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Soco's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

102. Nothing in this Consent Decree shall be deemed to constitute 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).

#### XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

103. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which 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 Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (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 133(f)(2).

104. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that Soco is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past and Future Response Costs and the Work. The Parties also agree, and by entering this Consent Decree this Court finds, that Soco is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CECRA Section 719(1), 75-10-719(1), MCA, for "matters addressed" in this Consent Decree.



105. Soco agrees that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree it will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

106. Soco also agrees that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree it will notify in writing the United States and the State within 30 days of service of the complaint on them. In addition, Soco shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

107. In any subsequent administrative or judicial proceeding initiated by the United States and/or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Soco shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States and/or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Sections XXI and XXII (Covenants Not to Sue by Plaintiffs).

#### XXV. ACCESS TO INFORMATION

108. Soco shall provide to EPA and DEQ, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, 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. Soco shall also make available to EPA and DEQ, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

#### 109. Business Confidential and Privileged Documents.

a. Soco may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Decree 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 it is submitted to EPA, or if EPA has notified Soco 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 Soco.

b. Soco 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 Soco asserts such a privilege in lieu of providing documents, it shall provide EPA and DEQ 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 Soco. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that it is privileged.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States or the State on the grounds that they are privileged or confidential.

110. 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 Site.

#### XXVI. RETENTION OF RECORDS

111. Until 10 years after Soco's receipt of EPA's notification pursuant to Paragraph 52.b of Section XIV (Certification of Completion), Soco 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 its liability under CERCLA with respect to the Site, provided, however, that Soco must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Soco must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records 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, provided, however, that Soco (and its contractors and



agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

112. At the conclusion of this document retention period, Soco shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States and/or the State, Soco shall deliver any such records or documents to EPA and DEQ. Soco 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 Soco asserts such a privilege, it shall provide the United States and the State 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 Soco. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

113. Soco hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability to the United States and the State regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 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; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Soco executes this Consent Decree.

## XXVII. NOTICES AND SUBMISSIONS

114. Whenever, under the terms of this Consent Decree, written notice is required to be given, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a



change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to DOJ, EPA, DEQ, and Soco, respectively. Reports or other documents required to be submitted under this Consent Decree which are not notices need only to be sent to the EPA Project Coordinator, EPA Enforcement Attorney, DEQ Project Officer, and DEQ Legal Counsel listed below.

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Ref: DJ#90-11-2-08777

As to EPA:

Leslie Sims  
EPA Project Coordinator  
United States Environmental Protection  
Agency  
Montana Operations, Region 8  
Federal Building  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626  
[Sims.Leslie@epa.gov](mailto:Sims.Leslie@epa.gov)

Michelle Marcu  
Enforcement Attorney  
United States Environmental Protection  
Agency  
Region 8  
Mail Code ENF-L  
1595 Wynkoop Street  
Denver, CO 80202-1129  
[Marcu.Michelle@epa.gov](mailto:Marcu.Michelle@epa.gov)

Maureen O'Reilly  
EPA Enforcement Specialist



United States Environmental Protection  
Agency  
Region 8  
Mail Code ENF-RC  
1595 Wynkoop Street  
Denver, CO 80202-1129  
[OReilly.Maureen@epa.gov](mailto:OReilly.Maureen@epa.gov)

Martha Walker  
Regional Financial Management Officer  
United States Environmental Protection  
Agency  
Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
[Walker.Martha@epa.gov](mailto:Walker.Martha@epa.gov)

(For Institutional Controls Only)  
Institutional Controls Coordinator  
Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

As to DEQ:

John Podolinsky  
DEQ Project Officer  
Montana Department of Environmental  
Quality  
P.O. Box 200901  
Helena, MT 59620-0901  
[JPodolinsky@mt.gov](mailto:JPodolinsky@mt.gov)

C. Bradley Smith  
DEQ Legal Counsel  
Montana Department of Environmental  
Quality  
P.O. Box 200901  
Helena, MT 59620-0901  
[BradS@mt.gov](mailto:BradS@mt.gov)

Katherine Haque-Hausrath  
DEQ Legal Counsel  
Montana Department of Environmental  
Quality  
P.O. Box 200901  
Helena, MT 59620-0901  
[KHaqueHausrath@mt.gov](mailto:KHaqueHausrath@mt.gov)

As to Soco:

James Sullivan  
Soco's Project Coordinator  
ATC Associates, Inc.  
917 1<sup>st</sup> Avenue North  
Billings, MT 59101  
[James.Sullivan@atc-enviro.com](mailto:James.Sullivan@atc-enviro.com)

Raj Mehta  
Soco West, Inc.  
100 First Stamford Place  
P.O. Box 14  
Stamford, CT 06902  
[rmehta@berkre.com](mailto:rmehta@berkre.com)

Thomas Terp  
Taft Stettinius & Hollister  
425 Walnut Street  
Suite 1800  
Cincinnati, OH 45202  
[terp@taftlaw.com](mailto:terp@taftlaw.com)

#### XXVIII. EFFECTIVE DATE

115. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.



**XXIX. RETENTION OF JURISDICTION**

116. This Court retains jurisdiction over both the subject matter of this Consent Decree and Soco for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

**XXX. APPENDICES**

117. The following Appendices are attached to and incorporated into this Consent Decree:

- “Appendix A” is the ROD.
- “Appendix B” is the SOW.
- “Appendix C” is the description and/or map of the Site.
- “Appendix D” is a list of the Site Institutional Controls.
- “Appendix E” is a draft easement.
- “Appendix F” is the initial Performance Guarantee.

**XXXI. COMMUNITY RELATIONS**

118. Soco shall propose to EPA and DEQ its participation in the community relations plan to be developed by EPA and DEQ. EPA will determine the appropriate role for Soco under the Plan. Soco shall also cooperate with EPA and DEQ in providing information regarding the Work to the public. As requested by EPA or DEQ, Soco shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or DEQ to explain activities at or relating to the Site.

**XXXII. MODIFICATION**

119. Schedules specified in this Consent Decree for completion of the Work within OU 2 may be modified by agreement of EPA and Soco. All such modifications shall be made in writing.

120. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without

written notification to and written approval of the United States, Soco, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Soco.

121. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

122. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Soco consents to the entry of this Consent Decree without further notice.

123. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

124. The undersigned representatives of the United States, EPA, DEQ, and Soco each certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

125. Soco hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States



and the State have notified Soco in writing that they no longer support entry of the Consent Decree.

126. Soco shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf Soco with respect to all matters arising under or relating to this Consent Decree. Soco hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Soco need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

#### XXXV. FINAL JUDGMENT

127. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

128. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Soco. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

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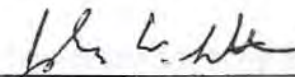
United States District Judge

**FOR THE UNITED STATES OF AMERICA:**

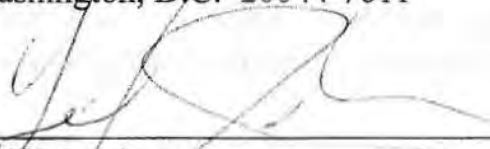
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
W. Benjamin Fisherow  
Acting Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

8/4/11  
Date

  
\_\_\_\_\_  
John W. Sither  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

8/5/11  
Date

  
\_\_\_\_\_  
Leif M. Johnson  
Civil Chief  
Office of the United States Attorney  
District of Montana  
2929 3rd Ave N.  
Billings, MT 59102



**FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION 8**

7/7/11  
Date

Matthew Cohn  
Matthew Cohn  
Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
Julie DalSoglio  
Director  
Montana Office

7/7/11  
Date


Kelcey Land  
Kelcey Land  
Director  
RCRA/CERCLA Technical Enforcement  
Program  
Office of Enforcement, Compliance  
and Environmental Justice

**FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION 8**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Matthew Cohn  
Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

7/7/11  
Date

  
\_\_\_\_\_  
Julie DalSoglio  
Director  
Montana Office

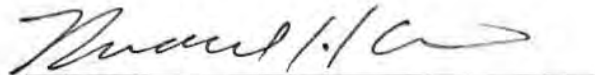
\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelcey Land  
Director  
RCRA/CERCLA Technical Enforcement  
Program  
Office of Enforcement, Compliance  
and Environmental Justice



**FOR THE STATE OF MONTANA:**

8/1/11  
Date

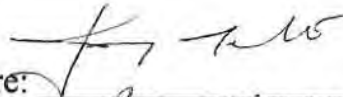
  
Richard H. Opper  
Director  
Montana Department of Environmental  
Quality

8/3/11  
Date

  
C. Bradley Smith  
DEQ Legal Counsel  
Montana Department of Environmental  
Quality  
P.O. Box 200901  
Helena, MT 59620-0901

**FOR SOCO WEST, INC.:**

6/30/11  
Date

Signature:   
Name (print): RAJ TEHTA  
Title: President  
Address: 100 FIRST STAMFORD PLACE  
STAMFORD, CT 06902

**Agent Authorized to Accept Service on Behalf of Above-signed Party:**

(print): Name Thomas Terp  
Title: Counsel  
Address: Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202  
Ph. Number: 513-357-9354