



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105-3901

IN THE MATTER OF:

Casmalia Disposal Site
Santa Barbara County, California

Proceeding under Section 122(g) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, as
amended, 42 U.S.C. § 9622(g)

U.S. EPA Docket No. 99-02(j)

[PROPOSED]
ADMINISTRATIVE
SETTLEMENT AGREEMENT
AND ORDER ON CONSENT—
DE MINIMIS CONTRIBUTORS

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I. JURISDICTION

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (“U.S. EPA”) by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987), and further delegated to the Regional Administrators of U.S. EPA by Delegation No. 14-14-E (issued May 11, 1994, amended by memorandum May 19, 1995). Within Region IX, this authority has been delegated to the Superfund Branch Chiefs by Regional Order 1290.21-B dated July 27, 2005 (“*De Minimis* Settlements”). This Settlement Agreement is also entered into pursuant to the authority of the Administrator pursuant to Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973. The Administrator’s authority has been delegated to the Regional Administrators of U.S. EPA by Delegation No. 8-22-C dated May 11, 1994. Within Region IX, this authority has been delegated to the Director of the Superfund Division by Regional Order 1280.20 dated April 6, 1998. This Settlement Agreement is also entered into by the United States on behalf of the United States Fish and Wildlife Service (“FWS”), United States Department of Interior (“DOI”); and on behalf of the National Oceanic and Atmospheric Administration (“NOAA”), United States Department of Commerce, each of whom, by Executive Order 12580, as amended by Executive Order 13016, 61 Fed. Reg. 45872 (August 30, 1996), has been delegated with the authority vested in the President as a Federal Trustee for natural resources that may have been, or in the future may be, injured by the release of hazardous substances at or from the Casmalia Disposal Site, as defined herein.

2. This Settlement Agreement is issued to the persons, corporations or other

entities identified in Appendix A (“Settling Parties”). Each Settling Party agrees to undertake all actions required by this Settlement Agreement. Each Settling Party further consents to and will not contest the United States’ jurisdiction to issue this Settlement Agreement or to implement or enforce its terms.

3. The U.S. EPA, Federal Trustees and Settling Parties (“Parties”) agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Statement of Facts or the Determinations contained in Sections IV (Statement of Facts) and V (Determinations), respectively, of this Settlement Agreement.

II. STATEMENT OF PURPOSE

4. By entering into this Settlement Agreement, the mutual objectives of the Parties, as more precisely described in the terms of this Settlement Agreement, are:

- a. to reach a settlement among the Parties with respect to the Casmalia Disposal Site (defined as “Site,” below), pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Settling Parties to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief with regard to the Site, and for response costs and, for some parties, Natural Resource Damages, incurred and to be incurred by the U.S. EPA or the Federal Trustees at or in connection with the Site, thereby reducing litigation relating to the Site;
- b. to provide Settling Parties with two options for resolution of such liability: Settlement Option A, for which the Settling Parties pay a greater premium and that affords greater finality (including, for example, a covenant not to sue

for Natural Resource Damages and for response costs incurred and to be incurred by the Federal Trustees at or in connection with the Site); and Settlement Option B, for which the Settling Parties pay a lower premium and that contains less finality and greater risks for the Settling Parties. The terms of Options A and B are more fully described within;

- c. to resolve any alleged claims of the Settling Parties that could have been asserted against the United States with regard to the Site;
- d. to simplify any remaining administrative and judicial enforcement activities concerning the Site by resolving the alleged liability of a substantial number of potentially responsible parties (“PRPs”) with respect to the Site;
- e. to obtain settlement with Settling Parties for their fair share of response costs incurred and to be incurred at or in connection with the Site by U.S. EPA Hazardous Substance Superfund and by other persons, not including the State of California, and, with respect to Settling Parties that elect Settlement Option A, response costs incurred by the Federal Trustees; and
- f. to provide for contribution protection for Settling Parties with regard to the Site pursuant to Sections 113(f)(2), and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement, including the attached appendices, that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

“Casmalia Consent Decree” shall mean the consent decree entered by the United States District Court for the Central District of California on June 27, 1997 in United States

of America v. ABB Vetco Gray, Inc., et al., Civ No. CV96-6518 KMW(Jgx).

“Casmalia Resources Closure/Post-Closure Trust Fund” shall mean the trust fund established by Casmalia Resources, as grantor, on or about October 24, 1985, to address closure/post-closure requirements established by the State of California, Department of Health Services and applicable to the Casmalia Resources Hazardous Waste Management Facility.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“Commerce” shall mean the United States Department of Commerce and any successor departments, agencies, or instrumentalities of the United States.

“Contaminants List” shall mean those contaminants identified to date at the Site and listed in Appendix C.

“CSC” shall mean the Casmalia Steering Committee.

“Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or a federal holiday, the period shall run until the close of business on the next working day.

“De Minimis Party” shall mean any PRP that the U.S. EPA has determined sent no more than 8.5 million pounds of waste to the Site.

“DOI” shall mean the United States Department of the Interior and any successor departments, agencies, or instrumentalities of the United States.

“Escrow Account” shall mean the escrow account for the Site, which was established pursuant to the Consent Decree entered by the United States District Court for the Central District of California on June 27, 1997, in United States of America v. ABB Vetco Gray Inc. et al., Civ. No. CV 96-6518-KMW (JGx) “Casmalia Consent Decree”). The Escrow Account holds money collected, inter alia, from this and other settlements and enforcement activities, and which shall be used for response actions at and concerning the Site.

“Escrow Trustee” shall mean the trustee of the Escrow Account.

“Facility” shall mean the former permitted Casmalia Resources Hazardous Waste Management facility, encompassing approximately 252 acres, located approximately ten (10) miles southwest of Santa Maria and one and a half miles north of Casmalia in Santa Barbara County, California, and depicted generally on the map attached as Appendix B.

“Federal Trustees” shall mean the Departments of Interior and Commerce, on behalf of the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, respectively.

“Interest” shall mean interest at the current rate specified for interest on investments of the U.S. 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).

“Natural Resources” shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of any and all Natural Resources at the Site.

“Paragraph” shall mean a portion of this Settlement Agreement, identified by an Arabic numeral.

“Parties” shall mean the United States, on behalf of the Federal Trustees, the U.S. EPA, and the Settling Parties.

“Person” shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of a state, or any interstate body.

“Phase 1 Work” and “Phase 2 Work” shall have the meaning assigned to them in the Casmalia Consent Decree.

“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).

“Section” shall mean a portion of this Settlement Agreement, identified by a Roman numeral.

“Settlement Agreement” shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any Appendix, this Order shall control.

“Settling Parties” shall mean those entities listed in Appendix A.

“Site” or “Casmalia Disposal Site” shall mean shall mean the Facility, as defined herein, and the areal extent of contamination that is presently located in the vicinity of the Facility, and any related “facility” as defined in CERCLA Section 101(9), 42 U.S.C. § 9601(9), and all suitable areas in very close proximity to the contamination necessary for the implementation of the response action(s), and any areas to which such contamination migrates.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

“U.S. EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

IV. STATEMENT OF FACTS

6. Paragraphs 7 through 25 below contain a summary of the Site background as alleged by U.S. EPA that, for purposes of this Settlement Agreement, the Settling Parties neither admit nor deny.

7. The Site encompasses (among other areas, as defined above) the former Casmalia

Resources Hazardous Waste Management Facility, an inactive commercial hazardous waste treatment, storage, and disposal facility, which accepted large volumes of hazardous substances from 1973 to 1989. Located on a 252-acre parcel in Santa Barbara County, California, the former Casmalia Resources Hazardous Waste Management Facility consists of six landfills, numerous surface impoundments, disposal trenches, injection wells, waste spreading areas and tank treatment systems.

8. The location of the Site is near the southern end of the Casmalia Hills in coastal California, approximately ten (10) miles southwest of the town of Santa Maria and one and a half miles north of the town of Casmalia. The Site is situated within the Shuman Canyon drainage sub-basin on a southern facing slope traversed by three small canyons. Casmalia Creek, about 500 feet west, is the surface water body nearest to the abandoned facility. This creek flows to the southwest to join Shuman Creek about one mile southwest of the town of Casmalia. Shuman Creek continues southward and westward, discharging eventually into the Pacific Ocean.

9. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been, or are threatening to be, released into the environment at or from the Site. These hazardous substances include a wide variety of organic and inorganic compounds.

10. During the Facility's seventeen (17) years of operation, the owner(s)/operator(s) accepted approximately 5.6 billion pounds of documented liquid and solid wastes from thousands of generators, including numerous large and small private businesses and federal, state, and local governmental entities.

11. From 1980 to 1989, the facility had interim status pursuant to RCRA, 42 U.S.C. § 6925(e), by operation of law. Because of continuing deficiencies in operations, no final RCRA permit was granted. The Facility has not been closed adequately in accordance with the requirements of RCRA.

12. In late 1989, the owner(s)/operator(s) ceased accepting off-Site waste shipments to the facility and, in the early 1990s, the owner(s)/operator(s) stopped all active efforts to properly close and remediate the facility, asserting that they had insufficient monies to pay for closure or remediation.

13. The Casmalia Resources Closure/Postclosure Trust Fund is insufficient to pay for the total estimated costs of closure and post-closure activities at the Site.

14. After the facility's owner(s)/operator(s) ceased accepting off-Site waste, the owner(s)/operator(s) curtailed facility maintenance activities, and Site conditions deteriorated and became unstable.

15. As a result of the release or threatened release of hazardous substances, U.S. EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In August 1992, U.S. EPA commenced a removal action under CERCLA to implement certain Site stabilization actions, prevent further deterioration of Site conditions, and control the most immediate threats. The Site continues to pose an imminent and substantial endangerment within the meaning of Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973.

16. In performing these response actions, U.S. EPA has incurred and will continue to incur response costs at or in connection with the Site. As of August 1, 1999, U.S. EPA had incurred at least \$19.19 million in response costs at this Site.

17. Because the owner(s)/operator(s) had failed to perform sufficient closure and remediation activities at the Site, in March 1993, U.S. EPA, under CERCLA and RCRA authorities, notified a group of approximately sixty-five (65) waste generators, representing some of the PRPs that arranged for disposal of the largest quantities of hazardous substances at the Site, of their potential liability for Site remediation. Approximately fifty-four (54) of the first sixty-five (65) notified generators formed the CSC.

U.S. EPA negotiated with the CSC and other PRPs to secure implementation of response actions at or in connection with the Site.

18. On September 17, 1996, the United States filed a complaint against the CSC pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, seeking cleanup of the Site and payment of certain response costs incurred by the U.S. EPA and the United States Department of Justice (“U.S. DOJ”) in connection with the Site. On this same date, the United States lodged the Casmalia Consent Decree in the Central District of California, United States District Court, resolving the claims in that complaint. On June 27, 1997, the Court entered the Casmalia Consent Decree.

19. The Casmalia Consent Decree establishes a comprehensive framework in which to address: (1) the remediation of the Site to protect public health, welfare and the environment from the release or threatened release of hazardous substances at the Site; and (2) the performance and financing of the response actions to be undertaken at the Site. The Casmalia Consent Decree contemplates that a significant portion of the work at the Site will be paid for by funds obtained through future enforcement efforts, including, but not limited to, settlements such as this de minimis Settlement Agreement, and various enforcement and settlement efforts directed toward the prior owner(s)/operator(s) of the Site and other PRPs.

20. On November 26, 2002, the District Court for the Central District of California entered two Consent Decrees pertaining to the Site: one entered into by Casmalia Resources, Hunter Resources and the estate of Kenneth H. Hunter, Jr. (the “Hunter Parties”), who have paid \$6.957 million and agreed to transfer certain real property to an entity to be identified later by the U.S. EPA, and the other entered into by the State of California, which has paid \$15 million. Neither the Hunter Parties nor the State of California admitted liability and both Consent Decrees provide contribution protection. On June 29, 2006, U.S. EPA entered into an agreement with assorted limited partners of

Kenneth H. Hunter, Jr. (“Castagnola Parties”). Under this agreement, the Castagnola Parties have paid U.S. EPA \$400,000. The Castagnola Parties did not admit liability, and the agreement provides contribution protection.

21. In October 1998, U.S. EPA began notifying de minimis PRPs of their potential liability in connection with the Site and providing settlement offers to them. An opportunity to settle has been offered to approximately 3,000 PRPs since 1999. U.S. EPA may enter into additional settlements such as this one with other de minimis PRPs in the future with respect to this Site.

22. Information currently known to U.S. EPA indicates that each Settling Party arranged for disposal or treatment at the Site, or arranged with a transporter for transport for such disposal or treatment, of hazardous substances owned or possessed by such Settling Party or by any other person or entity, or accepted a hazardous substance for transport to, and selected, the Site.

23. Information currently known to U.S. EPA indicates that each Settling Party contributed less than 8.5 million pounds of materials containing hazardous substances to the Site, and the hazardous substances contributed by each Settling Party to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. For the purposes of this Settlement Agreement, these Settling Parties are de minimis parties. The volume of materials attributed by U.S. EPA to each Settling Party is specified in Appendix A. Appendix C, entitled Contaminants List, provides a list of contaminants identified to date at the Site.

24. For purposes of this settlement, U.S. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by U.S. EPA and by private PRPs are \$284 million. The payment required to be made by each Settling Party pursuant to this Settlement Agreement is a minor portion of this total amount. The required payment (for Settlement Option A or B) for each Settling Party is specified in Appendix A.

25. Information currently known to the United States indicates the presence of one or more Natural Resources at or near the Site that may have been, or which may be, injured by release(s) of hazardous substances or that may have been or which may be injured by response actions. U.S. EPA shall seek to coordinate assessments, investigations and planning with the Federal Trustees pursuant to CERCLA Section 104(b)(2), 42 U.S.C. § 9604(b)(2).

V. DETERMINATIONS

26. Based upon the Findings of Fact set forth above and on the administrative record for this Site, U.S. EPA and the Federal Trustees, have determined that:

- a. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

- b. Each Settling Party is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- c. Each Settling Party is potentially liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- d. There has been an actual or threatened "release" of a "hazardous substance" at the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).
- e. The actual or threatened release of a hazardous substance at the Site has caused or may cause the incurrence of response costs and may have injured, or may injure, Natural Resources within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- f. Prompt settlement is "practicable" and in the "public interest" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- g. As to each Settling Party, this Settlement Agreement involves only a minor portion of the total response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- h. The amount of material containing hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Party is minimal in comparison to other hazardous substances at the Site as set forth in the Contaminants List attached as Appendix C, within the meaning of section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. SETTLEMENT AGREEMENT AND ORDER

27. Based upon the administrative record for the Site and the Statement of Facts

and the Determinations set forth above, and in consideration of the promises and covenants set forth in this Settlement Agreement, the following is hereby AGREED AND ORDERED:

VII. SETTLEMENT OPTIONS

28. Settling Parties may choose between Settlement Options A and B as set forth in this Section and in Sections XI (Covenant Not to Sue and Reservation of Rights by U.S. EPA and Federal Trustees), and XII (Covenant by Settling Parties Not to Sue). Except where this Order specifies particular Sections or Paragraphs as pertaining to Option A or B, in which case those provisions apply only to Settling Parties that elect Option A or B, respectively, all other terms of this Order apply equally to all Settling Parties, regardless of which settlement option they choose.

29. General Description of Options

- a. As between the two settlement options, Settlement Option A is designed to provide Settling Parties with a higher degree of finality and certainty. Under Settlement Option A, the payment includes a premium of 100%, which covers, among other risks, the risk that total response costs incurred or to be incurred at or in connection with the Site by the U.S. EPA, or by any private party, will exceed the estimated total response costs upon which Settling Parties' payments are based. Pursuant to Section XI (Covenant Not to Sue and Reservation of Rights by U.S. EPA and Federal Trustees), Settling Parties that choose Settlement Option A will receive more protective covenants (including a covenant not to sue for Natural Resource Damages and Federal Trustees' response costs), and these Settlement Option A covenants have more limited reservations.
- b. Under Settlement Option B, which offers less finality than Settlement Option A, the premium is 50%. Pursuant to Section XI (Covenant Not to Sue and Reservation of Rights by U.S. EPA and Federal Trustees), Settling Parties that

choose Option B do not receive a covenant not to sue for Natural Resource Damages or Federal Trustees' response costs and risk liability for additional future payments.

30. Calculation of Payment

- a. Each Settling Party's payment is based on its share, by weight, of the total waste disposed of at the Site multiplied by the U.S. EPA's estimated total response costs incurred or to be incurred at or in connection with the Site. U.S. EPA's total estimate for response costs at the Site is \$284 million.
- b. For Settling Parties that elect Settlement Option A, the settlement payment is based on the estimated \$271,930,000 that have been or will be incurred by U.S. EPA for response actions at the Site, and by the CSC for response actions at the Site as required by the Casmalia Consent Decree, and does not include \$12 million that was, at the time U.S. EPA prepared the 1999 Cost Estimate, in the RCRA Closure and Post-Closure Trust Fund established by the former owner/operator of the Site. In addition to \$271,930,000, the amount of \$193,417 has been added for certain estimated response costs that have been, or will be, incurred by the Federal Trustees at the Site. A portion of the money paid by Settling Parties that elect Settlement Option A will be provided to the Federal Trustees to perform activities that support both the response action and the assessment of potential injuries to natural resources in accordance with CERCLA sections 104(b)(2), 107(f)(1) and 122(j)(2), 42 U.S.C. §§ 9604(b)(2), 9607(f)(1) and 9622(j)(2). The payment amounts for each Settling Party are set forth in Appendix A.
- c. For Settling Parties that elect Settlement Option B, U.S. EPA's cost estimate is the estimated \$271,930,000 that have been or will be incurred by U.S. EPA for response actions at the Site, and by the CSC for response actions at the Site as required by the Casmalia Consent Decree. This amount does not

include \$12 million that, at the time U.S. EPA prepared the 1999 Cost Estimate, was in the RCRA Closure and Post-Closure Trust Fund established by the former owner/operator of the Site. This figure does not include an estimate for any response costs that will be incurred by the Federal Trustees.

- d. Each payment amount by Settling Parties includes a premium to cover the risks and uncertainties associated with this Settlement Agreement. The premium (100% for Settlement Option A, 50% for Settlement Option B) is applied to each Settling Party's volumetric share of all estimated "non-fixed Site response costs," but is not applied to U.S. EPA's and the CSC's calculation of "fixed Site response costs." Fixed Site response costs include \$16.38 million in Past Response Costs (as defined in the Casmalia Consent Decree) incurred by the United States between March 1, 1992, and July 22, 1997, and response costs of \$2.81 million incurred by the United States between July 23, 1997, and August 1, 1999 (the date U.S. EPA selected as the "cutoff" for the calculation of costs that have already been incurred for purposes of the cost estimate used for this Order and future enforcement efforts). Fixed Site response costs also include response costs of \$13.68 million incurred by the CSC for response actions between April 1993 and August 1998 for Phase 1 Work in accordance with the Casmalia Consent Decree. U.S. EPA's and the CSC's fixed Site response costs together total \$32.86 million. Under Settlement Option A or Settlement Option B, the premium is not assessed against this \$32.86 million. Under Settlement Option A or Settlement Option B, the premium is applied to U.S. EPA's and the CSC's "non-fixed" estimated Site response costs, or estimated response costs incurred and to be incurred at the Site after August 1, 1999. This amount totals \$239.07 million. Under Settlement Option A, the 100% premium is also applied to estimated non-fixed Site response costs of

193,417 incurred or to be incurred by the Federal Trustees, described in subparagraph b, above.

e. The mathematical formula for calculating each Settling Party's payment amount under Option A is as follows:

<u>Settling Party's Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Non-Fixed Site Response Costs \$239.07 Million	+	Natural Resources Trustees' Costs \$193,417	X	Premium (100%) 2.0		
			+				=	Payment Amount
<u>Settling Party's Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Fixed Site Response Costs \$32.86 Million				[No Premium Assessed]		

f. The mathematical formula for calculating each Settling Party's payment amount under Option B is as follows:

<u>Settling Party's Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Non-Fixed Site Response Costs \$239.07 Million	X	Premium (50%) 1.5		
					=	Payment Amount
<u>Settling Party's Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Fixed Site Response Costs \$32.86 Million				[No Premium Assessed]

- g. Each Settling Party's payment amount for Settlement Option A is set forth in Column A opposite that Settling Party's name on Appendix A. Each Settling Party's payment amount for Settlement Option B is set forth in Column B opposite that Settling Party's name on Appendix A.

VIII. PAYMENT

31. Signature and Payment by Settling Parties

- a. Each Settling Party has submitted to U.S. EPA a fully and properly executed original signature page for this Settlement Agreement, electing either Settlement Option A or Settlement Option B, and paid to the Escrow Account the payment specified for that Settling Party in the appropriate column (i.e., Column A for Option A, Column B for Option B) opposite that Settling Party's name in Appendix A in accordance with the instructions provided in Paragraph 32(a).

32. Payment Provisions

- a. Payment by Settling Parties. Each Settling Party made payment in full by one of the following methods:

(i) By Cashier's or Certified Check

Cashier's check or certified check, made payable to "MSSB FBO Casmalia Consent Decree" mailed to the following address:

Morgan Stanley Smith Barney
Attn: The Fisher McGlothin Group
1111 Northshore Dr. #N-160
Knoxville, TN 37919
Re: Casmalia Custody Account

and including a completed Payment Invoice.

(ii) By Wire Transfer

Funds wired to:
Citibank, New York
ABA/Locator#: 021000089
FBO: Morgan Stanley Smith Barney LLC
A/C: 40611172
New York, NY 10004

Further Credit to: 940-112590-210
REF: Casmalia Resources Site Custodial Agreement
Payor: the name of the Settling Party exactly as it appears at the top of the "Consent and Authorization" page.

At the time of payment, each Settling Party should submit a copy of the completed

Payment Invoice to:

Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne Street (SFD-7)
San Francisco, California 94105-3901

33. Refunds from the Escrow Account. In the event that this Settlement Agreement does not become effective, then U.S. EPA shall direct the Escrow Trustee, within thirty (30) days of receipt of notice of such event from U.S. EPA, to refund the Settling Parties payment(s). Any refunds made under this Paragraph shall include the interest accrued on the payment, if any, minus a pro rata share of the costs of administering the Escrow Account to that date and taxes payable by the Escrow Trustee with respect to payments made by the Settling Parties under this Settlement Agreement.

34. Disqualification. If at any time prior to the effective date of this Settlement Agreement, U.S. EPA determines, in its sole and unreviewable discretion, that one or more of the statements of facts made in Paragraph 23 or the determinations made in Subparagraphs 26(g) or (h) no longer apply(ies) to a Settling Party, such Settling Party shall be disqualified from participation in this settlement, and the Escrow Trustee shall, within thirty (30) days of receipt of written notification by U.S. EPA of such disqualification, refund such Settling Party's payment.

IX. FAILURE BY SETTLING PARTIES TO MAKE TIMELY PAYMENTS

35. Interest on Late Payments

- a. Because all Settling Parties electing Settlement Option A have remitted payment in full as required by Paragraph 32 prior to the effective date of this Order, no Interest shall accrue on any such payment.
- b. Settling Parties electing Settlement Option B who fail to pay their share of

increased costs as set forth in Paragraph 45 shall pay Interest on the unpaid balance, commencing on the date that payment is due and accruing through the date of the payment.

- c. Interest shall be paid by a separate check in the amount of the Interest owed and shall be sent simultaneously with the payment required in paragraph 45. Payment of Interest shall be made and a copy of the cashier's or certified check shall be sent as provided in paragraph 32(a) (Payment Provisions).

36. Stipulated Penalties and Disqualification

- a. In addition to the Interest required by Paragraph 35, if an Option B Settling Party fails to remit the payment required by Paragraph 45 when due, then that Option B Settling Party shall also pay stipulated penalties to U.S. EPA of \$1,000 per day for each day that the payment is late.
- b. Penalties shall begin to accrue from the day when payment by an Option B Settling Party is due pursuant to Paragraph 45 and shall continue to accrue until all payments required by this Order for that Option B Settling Party have been paid in full (e.g., when all payments, Interest, and stipulated penalties are paid in full). Penalties shall accrue regardless of whether U.S. EPA or the Escrow Trustee has notified the Option B Settling Party of a violation.
- c. Interest on penalties shall begin to accrue on the unpaid balance at the end of thirty (30) days from the date that payment was due under Paragraph 45.
- d. Stipulated penalties due to U.S. EPA shall be paid contemporaneously with the payment of the amount required by Paragraph 45 and the Interest thereon required by Paragraph 35. However, stipulated penalties, including any Interest owed on the stipulated penalties pursuant to subparagraph c of this Paragraph, shall be paid by a separate certified or cashier's check made

payable to "U.S. EPA Hazardous Substances Superfund," and shall be mailed to:

U.S. EPA - Region IX
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the Settling Party making payment and U.S. EPA Regional Site Spill ID Number 09-3H.

- e. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.
- f. Notwithstanding any other provision of this Section, the United States may, in its sole and unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement.

37. The releases and covenants set forth in Sections XI (Covenant Not to Sue and Reservation of Rights by U.S. EPA and Federal Trustees), and XII (Covenant by Settling Parties Not to Sue) and the contribution protection set forth in Section XIII (Effect of Settlement/Contribution Protection) are conditional upon compliance with all the terms of this Settlement Agreement, including - for Settling Parties electing Settlement Option B - payment pursuant to Paragraph 45.

38. If U.S. EPA or U.S. DOJ brings an action to enforce this Settlement Agreement against Settling Party(ies), such Settling Party(ies) shall reimburse the U.S. EPA and/or U.S. DOJ for all costs of such action, including but not limited to costs of attorney time.

39. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of a Settling Party's failure to comply with the requirements of this Settlement Agreement, including, but not limited to, bringing an

action against that Settling Party seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

X. CERTIFICATION OF SETTLING PARTY

40. By signing this Settlement Agreement, each Settling Party certifies, individually, that it has no reason to disagree with U.S. EPA's determinations that such Settling Party: (a) contributed less than 8.5 million pounds of materials containing hazardous substances sent to the Site; and (b) contributed hazardous substances of minimal toxic or other hazardous effects in comparison to other hazardous substances at the Site, as set forth in the Contaminants List attached as Appendix C.

XI. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

BY U.S. EPA AND FEDERAL TRUSTEES

41. General Reservations. The covenants by the U.S. EPA and the Federal Trustees set forth in Paragraphs 43 and 44 of this Settlement Agreement do not pertain to any matters other than those expressly specified in Paragraphs 43 and 44. The U.S. EPA and the Federal Trustees reserve, and this Settlement Agreement is without prejudice to, all rights against Settling Parties, with respect to all other matters, including but not limited to:

- a. liability for failure to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability based on a Settling Party's ownership or operation of the Site, or upon the transportation, treatment, storage or disposal, or the arrangement for the transportation, treatment, storage or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement;
- d. liability arising from the past, present, or future arrangement by a Settling

- Party, or a subsidiary or affiliated entity of that Settling Party, for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site that is both (1) not from a facility or specific location owned or operated by that Settling Party as specified in Appendix A, and (2) not included in the volume of waste attributed to that Settling Party as set forth in Appendix A; and
- e. with respect to Option B Settling Parties, claims by Federal Trustees for costs associated with response actions or Natural Resource Damages claims at the Site.

42. Reservation Concerning De Minimis Status. Notwithstanding any other provision in this Settlement Agreement, the U.S. EPA and the Federal Trustees reserve, and this Settlement Agreement is without prejudice to, the right to institute judicial or administrative proceedings against any individual Settling Party seeking to compel that Settling Party to perform response actions relating to the Site, and/or to reimburse the U.S. EPA and/or the Federal Trustees, for additional costs of response and/or Natural Resource Damages, if information not currently known to U.S. EPA is discovered that indicates such Settling Party no longer qualifies as a de minimis party at the Site because such Settling Party contributed more than 8.5 million pounds of materials containing hazardous substances to the Site, or contributed hazardous substances the toxic or hazardous effect of which are not minimal in comparison to other hazardous substances at the Site, as set forth in the Contaminants List attached as Appendix C. For purposes of this Section only, the volume of material contributed by a Settling Party shall not include any waste sent by an entity merged into or otherwise acquired by such Settling Party after the effective date of this Settlement Agreement.

43. In consideration of the payments that have been made by Settling Parties that have elected to settle under the provisions of Settlement Option A (“Option A Settling Parties”) under the terms of this Settlement Agreement, and except as specifically provided

in Paragraphs 41 and 42 of this Settlement Agreement, the U.S. EPA and the Federal Trustees hereby covenant not to sue or to take administrative action against any of the Option A Settling Parties pursuant to sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including for recovery of Natural Resource Damages and for response costs incurred or to be incurred by the Federal Trustees. With respect to present and future liability, this covenant shall take effect upon the effective date of this Settlement Agreement as set forth in Section XVIII (Effective Date). With respect to each Option A Settling Party, individually, this covenant is conditioned upon: a) the satisfactory performance by that Option A Settling Party of all its obligations under this Settlement Agreement; and b) the veracity of any information provided to U.S. EPA by that Option A Settling Party relating to Settling Party's involvement with the Site. This covenant extends only to Option A Settling Parties and does not extend to any other person.

44. In consideration of the payments that have been and may be made by Settling Parties that have elected to settle under the provisions of Settlement Option B ("Option B Settling Parties") under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 41, 42, and 45 of this Settlement Agreement, the U.S. EPA hereby covenants not to sue or to take administrative action against any of the Option B Settling Parties pursuant to sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant shall take effect upon the effective date of this Settlement Agreement as set forth in Section XVIII (Effective Date). With respect to each Option B Settling Party, individually, this covenant is conditioned upon: a) the satisfactory performance by Option B Settling Parties of all its obligations under this Settlement Agreement, including, but not limited to, the obligation to make future payments pursuant to Paragraph 45; and b) the veracity of any information provided to U.S. EPA by that Option B Settling Party relating to

that Option B Settling Party's involvement with the Site. This covenant extends only to Option B Settling Parties and does not extend to any other person.

45. Reservation for Increased Costs of Response Actions

- a. An estimate of the total cost of response actions at the Site has been developed for this and future de minimis settlements, enforcement activities, and other purposes ("1999 Cost Estimate"). The 1999 Cost Estimate (which does not include response costs to be incurred by the Federal Trustees) is \$284 million, which includes \$12 million that was, at the time of the 1999 Cost Estimate, in the RCRA Closure and Post-Closure Trust Fund established by the former owner/operator of the Site.
- b. Option B Settling Parties shall be liable for, and in its unreviewable discretion U.S. EPA may seek to have Option B Settling Parties pay, their volumetric share of any increase in response costs if:
 - (i) after the final Record of Decision ("ROD") for the Site has been issued and prior to certification of completion of the Phase 2 Work, U.S. EPA has revised or approved the revision of, or the Court has approved a revision of, the cost estimate for all response actions taken or to be taken at the Site ("Post-ROD Cost Estimate"); and
 - (ii) the estimated total Site Response Costs have increased from the 1999 Cost Estimate of \$284 million; and
 - (iii) based on actual expenditures at the Site and expenditures reasonably anticipated in accordance with the ROD, any other response action decision documents, and the revised cost estimate, U.S. EPA, in its unreviewable discretion, determines that the funds in the Escrow Account that are available for Phase 2 Work pursuant to the Casmalia Consent Decree will not be sufficient to pay for costs

associated with performance of the Phase 2 Work or not be sufficient to allow timely continuation of such work.

- c. In addition, Option B Settling Parties shall be liable for, and in its unreviewable discretion U.S. EPA may seek to have Option B Settling Parties pay, their volumetric share of any increase in response costs if:
 - (i) upon certification of completion of Phase 2 Work, U.S. EPA has revised, or approved the revision of, the cost estimate for all response actions taken or to be taken at the Site (“Post-Phase 2 Cost Estimate”); and
 - (ii) the Post-Phase 2 Cost Estimate has increased from either the 1999 Cost Estimate or the Post-ROD Cost Estimate, whichever is greater.
- d. If U.S. EPA determines, in its unreviewable discretion, that it will require payment of amounts derived pursuant to subparagraphs b or c, above, it shall compile an administrative record to support the revised cost estimate. The record shall include, but not be limited to, any Engineering Evaluation/Cost Analysis, Remedial Investigation/Feasibility Study, ROD, or any other response action decision documents, standard cost documentation for response costs incurred by the United States and a summary of response costs incurred by the CSC. The administrative record shall be made available to the public at U.S. EPA Region 9, Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105-3901.
- e. After compilation of the administrative record, U.S. EPA will send a notice to all Option B Settling Parties, which shall i) include the Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, and a brief summary describing and supporting the cost estimate, ii) state the availability of the administrative record for review, and iii) notify each Settling Party of the

amount it will be required to pay (i.e., its volumetric share of the increased cost).

- f. U.S. EPA shall have three years from the date of certification of completion of the Phase 2 Work to send the notice described in subparagraph e, above, relating to an increase in the Post-ROD Cost Estimate described in subparagraph b, above, or an increase in the Post-Phase 2 Cost Estimate described in subparagraph c, above.
- g. Option B Settling Parties shall have thirty (30) days from the date of the notice described in subparagraph e, above, to submit comments to U.S. EPA concerning the Post-ROD Cost Estimate or the Post-Phase 2 Cost Estimate, as applicable, and/or the administrative record in support of the cost estimate. Comments shall be submitted to: Casmalia Case Team (SFD-7), 75 Hawthorne Street, San Francisco, California 94105-3901. U.S. EPA shall prepare a response to significant comments, and shall place the comments and its response in the Superfund Records Center at the address listed in subparagraph d, above. U.S. EPA shall send to the Option B Settling Parties a notice containing the response to comments, and any resulting revision to the cost estimate and corresponding adjustment to each Option B Settling Party's required payment amount. If no comments were received, U.S. EPA shall notify the Option B Settling Parties that the prior Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, of which the Option B Settling Parties received notice pursuant to subparagraph e, above, has become final, and shall make a demand for payment to each Option B Settling Party of the amount set forth in such notice.
- h. After U.S. EPA has responded to any comments, U.S. EPA's Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, revised if necessary

pursuant to subparagraph g, above, shall be considered final, unless within fourteen (14) days of receipt of the response to comments, the Option B Settling Parties appoint a delegation (consisting of no more than ten (10) persons) to request a meeting with the U.S. EPA Region 9 Superfund Division Director. The appointed delegation may not raise to the Division Director any issues that had not previously been raised by the written comments. (If U.S. EPA received no comments on the initial Post-ROD or Post-Phase 2 Cost Estimate, there shall be no appeal to the Division Director.) Further, the Option B Settling Parties shall not challenge any fixed Site response costs included in the 1999 Cost Estimate, and described in Paragraph 30, above.

- i. If no meeting with the Division Director was requested pursuant to subparagraph h, above, U.S. EPA shall notify the Option B Settling Party that the prior Post-ROD or Post-Phase 2 Cost Estimate, revised (if necessary) pursuant to subparagraph g, above, has become final, and shall make a demand to each Option B Settling Party for payment of the amount set forth in the notice sent to each Option B Settling Party pursuant to subparagraph g, above.
- j. If a meeting with the Division Director is held, the Division Director shall review the administrative record supporting the cost estimate (including the comments and responses thereto). The Division Director shall resolve the dispute(s) consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP") and the terms of this Order and will issue a final written administrative decision. Such decision shall be final and shall not be subject to judicial review. U.S. EPA shall send the Option B Settling Parties the Division Director's written decision, any necessary revision to the Post-ROD or Post-Phase 2 Cost Estimate, as

applicable, any corresponding adjustment to each Option B Settling Party's required payment amount, and a demand for payment of such amount.

k. Option B Settling Parties' Manner of Payment and Failure to Make Timely Payment

(i) Option B Settling Parties shall make any additional payment(s) within thirty (30) days of receipt of U.S. EPA's demand for such payment under subparagraphs g, i or j, above. Payment, and notice of such payment, shall be made in the manner set forth in Paragraph 32(a).

(ii) If an Option B Settling Party fails to remit any payment(s) required by subparagraph k(i), above, when due, then that Option B Settling Party shall pay Interest on the unpaid balance in accordance with Paragraph 35. Payment of such Interest shall be made in accordance with Paragraphs 32(a) and 35.

(iii) In addition to Interest, such Option B Settling Party shall pay stipulated penalties to U.S. EPA of \$1000 per day for each day that the payment is late. Penalties and Interest on such penalties shall accrue and shall be paid as set forth in Paragraph 35.

(iv) Each Option B Settling Party hereby agrees that the running of the limitations periods in all statutes of limitations applicable to any rights, claims, causes of action, counterclaims, cross claims, and defenses regarding, based upon, or arising out of disposal of hazardous substances at the Site that either U.S. EPA or the CSC could assert against such Option B Settling Party shall be suspended for a period commencing on the Effective Date of this Settlement Agreement and terminating eighteen (18) months after the latest date

upon which final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above.

(v) If U.S. EPA or U.S. DOJ brings an action to enforce this Settlement Agreement against any Option B Settling Party, such Option B Settling Party shall reimburse U.S. EPA and/or U.S. DOJ for all costs of such action, including but not limited to costs of attorney time.

(vi) Payments made under this subparagraph shall be in addition to any other remedies or sanctions available to the United States by virtue of Option B Settling Parties' failure to comply with the requirements of this Settlement Agreement.

- l. Duty to Inform U.S. EPA of Changes in Address or Legal Status. Until eighteen (18) months after the latest date upon which final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above, each Option B Settling Party shall notify the Casmalia Case Team of any change in address, ownership, political configuration, or corporate or other legal status. Such notice shall be sent to the Casmalia Case Team address provided in Paragraph 32(a), above.

XII. COVENANT BY SETTLING PARTIES NOT TO SUE

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

- a. any direct or indirect claim for reimbursement from U.S. EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of

CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claims arising out of response activities at the Site; and
- c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.
- d. any claim pursuant to section 7002 of RCRA, 42 U.S.C. §§ 6972, or any other comparable California laws, relating to the Site; and
- e. any claim asserting a “takings” or similar claim.

Except as provided in Paragraph 48 and Paragraph 50, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XI (Covenant Not to Sue and Reservation of Rights by U.S. EPA and Federal Trustees, other than in Paragraph 41 (a) or (b), but only to the extent that Settling Parties’ claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

48. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Section 107(a) or 113 of CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such Settling Party.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

49. Except as provided in Paragraph 48, nothing in this Settlement Agreement shall

be construed to create any rights in, or grant any cause of action to, any person not one of the Parties to this Settlement Agreement. Except as provided in paragraph 48, each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

50. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, Natural Resource Damages, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 43 and 44.

51. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of §§ 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and that each Settling Party is entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2), and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and 9622(g)(5), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement.

- a. For Option A Settling Parties, the "matters addressed" in this Settlement Agreement are all response actions taken by the U.S. EPA and the Federal

Trustees and by private parties, and all response costs incurred and to be incurred by the U.S. EPA and the Federal Trustees and by private parties, at or in connection with the Site and Natural Resource Damages at or relating to the Site; provided, however, that for Option A Settling Parties, the “matters addressed” in this Settlement Agreement do not include those response costs or response actions as to which the U.S. EPA and/or the Federal Trustees have reserved their rights under this Settlement Agreement (except for claims for failure to comply with this Order), in the event that the U.S. EPA or the Federal Trustees assert rights against Settling Parties coming within the scope of such reservations.

- b. For Option B Settling Parties, the "matters addressed" in this Settlement Agreement are all response actions taken by the U.S. EPA and by private parties, and all response costs incurred and to be incurred by the U.S. EPA and by private parties, at or in connection with the Site; provided, however, that for Option B Settling Parties, the “matters addressed” in this Settlement Agreement do not include those response costs or response actions as to which the U.S. EPA and the Federal Trustees have reserved their rights under this Settlement Agreement (except for claims for failure to comply with this Order), in the event that the U.S. EPA or the Federal Trustees assert rights against Settling Parties coming within the scope of such reservations. In addition, for Option B Settling Parties, the “matters addressed” in this Settlement Agreement do not include Natural Resource Damages.

52. Each Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify U.S. EPA in writing at the following address no later than sixty (60) days prior to the initiation of such suit or claim:

Chief, Hazardous Waste Branch
Office of Regional Counsel

U.S. Environmental Protection Agency
75 Hawthorne Street (ORC-3)
San Francisco, CA 94105-3901

Each Settling Party shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify U.S. EPA in writing within 10 days of service of the complaint or claim upon such Settling Party. In addition, each Settling Party shall notify U.S. EPA 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, for matters related to this Settlement Agreement.

XIV. PARTIES BOUND

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

XV. INTEGRATION/APPENDICES

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

“Appendix A” is the list of Settling Parties and their waste volumes and settlement payment amounts.

“Appendix B” is a map of the Site.

“Appendix C” is a list of contaminants identified to date at the Site.

XVI. PUBLIC COMMENT

55. This Settlement Agreement shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and Section 7003 of RCRA, 42 U.S.C. § 6973, including, if requested, a public hearing in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

56. In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), U.S. EPA or the Federal Trustees may withdraw or modify consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

57. The Attorney General or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVIII. EFFECTIVE DATE

58. The effective date of this Settlement Agreement shall be the date upon which U.S. EPA issues written notice to Settling Parties that public comment period pursuant to Paragraph XVI of this Settlement Agreement has closed and that comments received, if any, do not require modification of or withdrawal from this Settlement Agreement by U.S. EPA or the Federal Trustees.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

Enrique Manzanilla
Director
Superfund Division
EPA Region IX

United States, on behalf of the Federal Trustees

By:

Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice