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APPENDICES

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent and Settlement Agreement for Removal Action and Past Response Costs ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Atlantic Richfield Company ("ARC" or "Respondent"). This Order provides for the performance of response actions by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at the Anaconda Copper Mine Site in Yerington, Nevada (the "Site").

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

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

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding on EPA and on Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. Respondent is liable for carrying out all activities required by this Order.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

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

a. "BLM" shall mean the United States Department of Interior Bureau of Land Management.

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

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

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

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

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "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.

h. "Operable Unit" shall mean certain discrete areas or tasks within the Site as determined by similarities in the location or hazardous substances present, and as may be further defined in the SOW. The Operable Units are generally described as follows: Site-wide Groundwater OU 1; Pit Lake OU 2; Process Areas OU 3; Evaporation Ponds and Sulfide Tailings OU 4; Waste Rock Areas OU 5; Oxide Tailings OU 6; Wabuska Drain OU 7; Arimetco Facilities OU 8.

i. "Order" shall mean this Administrative Order on Consent and Settlement Agreement for Removal Action and Past Response Costs, and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

j. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondent.

l. "Past Response Costs" shall mean those costs incurred in Site Operable Units 1-7 from June 1, 2007, through December 31, 2008, as stated in Appendix 4, plus Interest on all such costs that has accrued pursuant to 42 U.S.C § 9607(a) through such date.

m. "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).

n. "Response Costs" shall mean all costs, including direct costs and indirect costs incurred by the United States to perform or support response actions at the Site pursuant to this Order. Response Costs include but are not limited to the direct and indirect costs of implementing and overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.

o. "Respondent" or "ARC" shall mean Atlantic Richfield Company.

p. "Section" shall mean a portion of this Order identified by a Roman numeral.

q. "Site" shall mean the Anaconda Copper Mine Site, encompassing approximately 3,468 acres, located at 102 Burch Drive, near Yerington, Nevada, in Lyon County, and other areas to which hazardous substances, pollutants or contaminants have migrated from the Anaconda Copper Mine Site. The Site includes portions of Township 13N, Range 25E, Sections 4, 5, 8, 9, 16, 17, 20, and 21 (Mount Diablo Baseline and Meridian) on the Mason Valley and Yerington USGS 7.5 minute quadrangles. The geographic coordinates of the Anaconda Copper Mine Site are 38E 59' 53.06" North latitude and 119E 11' 57.46" West longitude.

r. "State" shall mean the state of Nevada.

s. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the response actions, as set forth in Appendix 1 to this Order, and any modifications made thereto in accordance with this Order.

t. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. "Work" shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

9. The Site is an abandoned, low-grade copper mine and extraction facility located in the Mason Valley, in Lyon County, Nevada. The Site is located approximately one mile west of Yerington, directly off of Highway 95. Approximately fifty percent of the Site is privately owned land, and the rest is land within the jurisdiction, custody and control of the United States Bureau of Land Management ("BLM"). The Site occupies 3,468.50 acres of disturbed land in a rural area, bordered to the north by residential acreage and open fields of alfalfa and onions, and to the east by Highway 95, which separates the Site from the city of Yerington, Nevada. To the south continues BLM range land, and to the west and southwest the Singatse mountains.

10. Facilities associated with mining operations at the Site include an open-pit mine, mill buildings, tailing piles, waste fluid ponds, and the adjacent residential settlement known as Weed Heights. A network of leach vats, heap leaching pads and evaporation ponds remains
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throughout the Site, in addition to a lead working shop, a welding shop, a maintenance shop, two warehouses, an electro-winning plant, and an office building.

11. The Site began operation in or about 1918, originally known as the Empire Nevada Mine. In 1953, Anaconda Copper Mining Company ("Anaconda") acquired and began operating the Site. In or about 1977, Respondent acquired Anaconda and assumed its operations at the Site. In June 1978, Respondent terminated operations at the Site. In or about 1982, Respondent sold its interests in the private lands within the Site to Don Tibbals, a local resident, who subsequently sold his interests with the exception of the Weed Heights community to Arimetco, Inc. ("Arimetco"), the current owner. Arimetco operated a copper recovery operation from existing ore heaps within the Site from 1989 to November 1999. Arimetco has terminated operations at the Site and is currently managed under the protection of the United States Bankruptcy Court in Tucson, Arizona.

12. During the 25-year operational period that Anaconda and Respondent operated the Site, they removed approximately 360 million tons of ore and debris from the open pit mine, much of which now remains in tailings or heap leach piles. Anaconda and Respondent beneficiated copper ores from the mine by two separate methods depending on the ore type. The mined ore contained copper oxides in the upper portion of the open pit and copper sulfides in a lower portion of the open pit. During on-Site milling operations, a copper precipitate was produced from the oxide ore and a copper concentrate was produced from the sulfide ore. In the first of two processing methods for the oxide ore, the operator placed the copper oxide ore in leaching vats and leached out copper with sulfuric acid. The copper precipitated out after passing over iron scraps. The second process, which started in 1965, used dilute sulfuric acid spread over the top of low grade oxide ore piles from which copper would leach out with the resulting acidic solution, with the copper again precipitated out after passing over iron scraps. Anaconda and Respondent utilized this dump leaching method for over 10 years at the W-3 dump at the Site. To facilitate their leaching operations, Anaconda and Respondent produced their own sulfuric acid at the Site at a rate of over 400 tons per day. To process the copper sulfide ore, Anaconda and Respondent crushed the ore and produced copper concentrate by flotation, with lime (calcium oxide) added to maintain an alkaline pH. The resulting copper concentrate would be shipped off-Site for final processing.

13. Byproducts of the milling operation were wet gangue from the sulfide ore and wet tailings and iron- and sulfate-rich acid brine from the oxide ore. Respondent left gangue and tailings at the Site in large dumps and ponds. Respondent evaporated the acid brine in large evaporation ponds, some of which ponds were equipped with asphalt liners, while others were unlined. Aerial photographs taken in August 1977 indicated that the disposal ponds occupied approximately 1,377 acres. The evaporation pond and the tailings piles have leached contaminants into the groundwater.

14. Arimetco used solvent extraction and electro-winning to extract copper from copper oxide ore, including the reprocessing of some ore first processed by Anaconda or Respondent. The process used by Arimetco involved leaching the ore successively with a mild acid solution and kerosene in three process vats with a total storage of 200,000 gallons. A stronger sulfuric acid solution subsequently removed copper from the kerosene solution. A final electro-winning plant
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plated the copper onto stainless steel sheets. Arimetco recirculated the acid solution from the electro-winning vats back to the leach heaps. The leach heap pads currently drain acidic fluids. Records indicate that on February 3, 1997, there was a 40,000 gallon spill of sulfuric acid from Arimetco's facilities.

15. Anaconda and Respondent abandoned at the Site transite pipe, a waste tire pile and other wastes that potentially interfere with Site characterization and response actions.

16. EPA has confirmed that over 3,000 acres of tailings with a potentially high concentration of metals remain at the Site, and that the abandoned process fluids emanating from the tailings have a low pH and contain excessive quantities of arsenic, cadmium, chromium, copper, and iron. Salts precipitating from these seeps contain even higher concentrations of such metals. Also present in the process fluid are radionuclides, including uranium, thorium, and radium.

17. In October 2000, EPA conducted an Expanded Site Inspection at the Site, which consisted of collecting groundwater samples from six monitoring wells on and around the Site, and samples of standing water from a below ground cellar, pregnant leachate solution, tailings and leachate salts. These samples again confirmed high concentrations of contaminants, including beryllium, cadmium, chromium, lead, mercury, and selenium. The groundwater monitoring well samples revealed levels above the regulatory limits for drinking water of arsenic, beryllium, cadmium, chromium, lead, and selenium. EPA concluded from this study that toxic heavy metals exist in source materials at the Site and have contaminated groundwater. The local groundwater is a source of drinking water for an approximate 5,020 people living within four miles of the Site.

18. In November 2001, EPA obtained and analyzed surface and subsurface soil samples from within the Site and from off-Site areas that might have been affected by the Site (specifically the Yerington Paiute Colony).

19. In December 2003, EPA conducted a screening level gamma ray survey of the surface sediments in evaporation ponds at the Site and detected radiation levels in excess of three times background.

20. From June through December 2004, BLM conducted a surface radiological survey of the process areas of the Site and certain other portions of the Site, and soil sampling from areas of elevated radiation. The samples indicated substantially elevated levels of radium 226 at 9,300 pico-Curies per gram ("pCi/gm"), which is above EPA's Preliminary Remediation Goals ("PRGs") of 3.7 pCi/gm for an industrial outdoor worker and radium 228 at 78 pCi/gm, which is above EPA's PRG of 8.4 pCi/gm for an industrial outdoor worker. This survey identified areas with elevated levels exceeding PRGs for uranium and thorium radioisotopes and exposure rates as high as 5 milliREM per hour (more than two times EPA's guidance level for unrestricted property). The identified occurrence of the radiological contaminants at greater than background levels indicates that process solutions, copper ore, and potentially waste rock throughout the Site could contain disturbed or "technologically enhanced" naturally occurring radioactive materials, which

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may have migrated from the Site through saturated sediment, sludges, crushed and uncrushed rock, fugitive dust and precipitated solutions and be impacting surface water and groundwater.

21. Early in April 2006, the United States Fish and Wildlife Service reported observing a dead bird nearby some standing fluid on the sulfide tailings during the course of a natural resource damage assessment. In considering whether the bird mortality resulted from the ingestion of the fluid, which appeared to be the result of precipitation that had dissolved existing residues from past mining activities, EPA obtained and analyzed fluid samples from five areas of standing fluids on the north end of the Site. The sampling addressed: the three pumpback containment ponds; areas of standing water within the asphalt-lined evaporation ponds; and the Arimetco pregnant solution collection ditch adjacent to the Vat Leach Heap Leach Pad. Preliminary analytical results indicate very low pH fluids containing elevated uranium and metals in each of the three areas as follows: (1) the pumpback ponds exhibited low pH ranging from 2.6 to 4.0, with uranium concentrations from 850 to 2,100 ug/l and elevated metals up to 10 times or greater than those seen in the extraction wells supplying the ponds; (2) an area of standing water exhibited a pH of 0.29, uranium at 27,000 ug/l and elevated metals up to 4 times higher than seen in EPA's October 2000 sampling of similar standing fluid in a below ground cellar; and (3) the Arimetco fluid sampled exhibited a pH of 2.7, uranium at 8,900 ug/l and elevated metals at approximately the same magnitude as seen in EPA's October 2000 sampling of similar pregnant solutions. Fluids with such low pH and elevated metals potentially pose acute toxicity to wildlife. Additionally, the elevated uranium concentrations pose a threat of substantial harm to the public health or welfare or the environment. In 2007 and 2008, EPA became aware of additional bird casualties at the Site.

22. In 2006, EPA completed a removal action to address a damaged Arimetco heap leach draindown evaporation pond, and conducted a removal assessment of the remaining Arimetco heap leach draindown ponds from July through August 2007. EPA also conducted a remedial investigation of the ponds and heap leach pads in September through October 2007. Samples from sediment below the ponds contained metals (copper, iron, and lead) and total petroleum hydrocarbons ("TPH") at concentrations exceeding industrial or residential soil PRGs. Samples from heap leach draindown solutions exhibited pH and specific conductance values ranging from 1.9 to 2.8 and 31,000 to 45,000 microhms per centimeter, respectively. Metals, specifically aluminum, antimony, arsenic, beryllium, boron, cadmium, chromium, copper, iron, lead, manganese, mercury, thallium and zinc exceeded primary or secondary drinking water maximum contaminant levels ("MCLs"). Radiological measurements from the heap leach draindown solutions generally exceeded the MCL for thorium isotopes 228, 230, and 232; uranium isotopes 234, 235, 238; and gross alpha particles. TPH (as diesel and kerosene) in the same samples ranged from 750 to 2,100 micrograms per liter ("µg/L"), and all but one draindown solution sample exceeded the state of Nevada cleanup guideline of 1,000 µg/L for TPH. In August 2007 and from August through October 2008, EPA conducted additional removal actions to close inactive draindown ponds and repair the active draindown ponds for the Arimetco heap draindown system, as well as conduct a removal of high TPH soils.

23. EPA conducted a surface radiological survey and collected subsurface soil samples in the Process Areas (OU3) portion of the Site from July through October 2007 to further

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characterize the extent of radiological contamination. Sampling confirmed various areas in which radiation survey results indicated contamination above the project action level of 3.79 pCi/g Ra-226 (plus daughters).

24. Respondent conducted characterization of the inactive evaporation ponds in October 2008 to support development of a potential response action. Preliminary results indicate continuing concerns with the low pH in standing water and metals and other contaminants in fugitive dust.

25. Carcinogens at the Site include arsenic, chromium, the radioisotopes of uranium (uranium-234, uranium-235, and uranium-238), the radioisotopes of thorium (thorium-230 and thorium-232), and the radioisotopes of radium (radium-228 and radium-226). Aluminum, arsenic, beryllium, boron, cadmium, copper, iron, lead, manganese, mercury, molybdenum, selenium, zinc, uranium, and chloride and sulfate are toxic metal contaminants at the Site. Disturbed and concentrated heavy metals at the Site pose threats through inhalation and ingestion that can result in neurological, kidney, and liver damage, and behavior and learning problems.

26. By agreement with the Nevada Department of Environmental Protection (“NDEP”), EPA has assumed the lead agency role for this Site.

27. The Administrative Record supporting this action is available for review at the EPA Region IX Records Center, located at 95 Hawthorne Street, San Francisco, California (94105).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Anaconda Copper Mine Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Respondent was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and for response costs incurred and to be incurred at the Site.

f. The conditions described in Section IV of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

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

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

29. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Prior to the execution of this Order, Respondent provided EPA in writing information sufficient to demonstrate the qualifications of the personnel, including contractors, subcontractors, consultants and laboratories, presently used to perform response actions and EPA approved those individuals and entities. Respondent shall notify EPA in writing prior to making any changes or additions in the personnel used to carry out Work, providing their names, titles and qualifications, and any changes or additions to the personnel will be subject to EPA’s approval. If EPA disapproves in writing of any replacement’s or addition’s technical qualifications, Respondent shall notify EPA of the identity and qualifications of new proposed replacements or additions within thirty (30) days of the written notice. If EPA again disapproves of a replacement or addition, Respondent shall propose a new replacement or addition and the process shall continue until EPA approves a replacement.

30. Prior to the execution of this Order, Respondent provided EPA in writing its designation of Roy Thun as its Project Coordinator who shall be responsible for the administration of all actions by Respondent required by this Order. Respondent shall notify EPA as provided in Paragraph 32 prior to making any changes or additions regarding its Project Coordinator, and shall submit to EPA the proposed Project Coordinator’s name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person’s name, address, telephone

number, and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

31. EPA has designated Nadia Hollan Burke of the EPA Region IX Superfund Division, as its Remedial Project Manager ("RPM"). EPA designates David Seter as an alternate RPM for the Site, in the event Ms. Hollan Burke is not present at the Site or is otherwise unavailable. During such times, Mr. Seter shall have the authority for the Site vested in the designated RPM as stated in Section XIV of this Order. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the RPM at:

Superfund Division (SFD 8-2)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
hollan.nadia@epa.gov
seter.david@epa.gov

32. EPA and Respondent shall have the right, subject to Paragraph 29, to change their respective designated RPM or Project Coordinator. Respondent shall notify EPA 10 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

33. Respondent shall perform actions necessary to achieve the performance objectives stated below and to implement the Statement of Work. The Work under this Order shall include, but is not limited to, the following:

a. Evaporation Ponds:

Respondent shall provide and implement a work plan to install a VLT cap that will limit standing water in the lined evaporation ponds to the northwest within the Site to prevent to the extent feasible threats to wildlife as determined by EPA. The work plan also shall include proposed measures (i.e., a VLT cap) to minimize the migration of dust containing hazardous substances from the lined and unlined evaporation ponds to the northwest within the Site, including those areas known as the "Thumb Pond" and "Sub Area A" within the "Sulfide Tailings Area."

b. Radiological Materials in Processing Area:

Respondent shall prepare and implement a work plan to mitigate threats from radiation contaminated soils, material and equipment above EPA's PRGs for outdoor workers in

industrial use of the Site to levels at or below EPA's PRGs for outdoor workers in industrial use of the Site.

c. Arimetco Heap Leach Fluids:

Respondent shall revise the 2005 Interim Operations, Maintenance and Monitoring Plan ("O&M Plan") to clarify that, as regards the Arimetco Heap Leach Fluid System (the "System"), Respondent shall address maintenance concerns to prevent reasonably foreseeable deterioration of the System, including but not limited to operation and maintenance of any evaporative system that may be installed in the System. Respondent shall perform the additional maintenance required by the revised O&M Plan, as approved by EPA. The revisions shall provide that ARC is obligated to perform all repairs estimated to cost up to \$25,000 per separate and distinct repair of any of the components of the System. ARC shall not be obligated to replace components that have reached the expiration of their ordinary and expected useful life, as determined by EPA.

d. Transite Pipe Removal:

Respondent shall provide and implement a work plan to remove and dispose of in an onsite repository all transite pipe on the Site.

e. Electrical Threats Within the Site:

Respondent shall provide and implement a work plan to characterize and remove threats via de-energizing vestigial electrical systems within the Site, except those presently used or reasonably anticipated to be used to conduct response work within the Site.

34. Work Plans and Implementation.

a. Respondent shall submit to EPA for approval draft work plans for performing the response actions generally described in Paragraph 33, and as further described in and consistent with the schedule stated in the SOW (individual work plans to meet respective objectives and schedule allotments). Each draft work plan shall provide a description of, and a schedule for, the respective actions required by that work plan.

b. EPA may approve, disapprove, require revisions to, or modify any draft work plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft work plan within fifteen days of receipt of EPA's notification of the required revisions. Respondent shall implement each respective work plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, each work plan, its schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence implementation of any work plan developed hereunder until receiving written EPA approval pursuant to Paragraph 34(b).

35. Health and Safety Plan. Respondent has provided EPA with a Site Health and Safety Plan that EPA has reviewed. Prior to making any changes to the Health and Safety Plan, or within ten (10) days after notice of additional comments from EPA, Respondent shall submit for EPA review and comment a revised plan that ensures the protection of the public health and safety during performance of on-Site Work. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan with changes through the duration of the Work.

36. Quality Assurance and Sampling.

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

b. On request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. On request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than fifteen (15) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

37. Post-Removal Site Control. In accordance with any work plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal Site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. On EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal Site control arrangements. The Parties anticipate that the Work will not interfere with the efficient performance of any long-term remedial action.

38. Reporting.

a. Respondent shall submit to EPA monthly progress reports concerning actions undertaken pursuant to this Order by the fifteenth (15th) day of the following month, after the date of receipt of EPA's approval of any of the respective work plans until termination of this Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed under the respective work plans, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit two (2) copies of all plans, reports or other submissions required by this Order, the Statement of Work, or any approved work plan, to EPA, and to other recipients as directed by the RPM. On request by EPA, Respondent shall submit such documents in electronic form.

39. Final Report. Within sixty (60) days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

40. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the RPM. However, this notification requirement shall not apply to any off-Site shipments when the total annual volume of all such shipments will not exceed ten (10) cubic yards.

i. Respondent shall include in the written notification the following information: 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. Respondent 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.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by subparts (a) and (b) of this Paragraph 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, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent 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 regulation cited in the preceding sentence.

IX. SITE ACCESS

41. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

42. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements immediately after the Effective Date, or as otherwise specified in writing by the RPM. Respondent shall immediately notify EPA if after using its best efforts Respondent is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees

incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs). As of the Effective Date of this Order, access for response actions throughout the Site has been granted to Respondent and EPA by Arimetco and the BLM.

43. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

44. Respondent shall provide to EPA, on 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 Order, 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. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

45. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA, under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. ' 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent 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 Respondent.

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

47. 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.

XI. RECORD RETENTION

48. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent 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 that come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

49. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, on request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent 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 Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

50. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA 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 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

51. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in each respective work plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. In the event of any action or occurrence during performance of the Work that 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, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the RPM or, in the event of her unavailability, the Regional Duty Officer at (888) 254-3130, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with this Order or the NCP pursuant to Section XV (Payment of Response Costs).

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

XIV. AUTHORITY OF REMEDIAL PROJECT MANAGER

54. The RPM shall be responsible for overseeing Respondent's implementation of this Order. The RPM shall have the authority vested in an RPM and an On-Scene Coordinator by the NCP, including the authority, consistent with the NCP, to halt any Work required by this Order and to take any necessary response action when the RPM 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 the release or threatened release of Waste Material.

XV. PAYMENT OF RESPONSE COSTS

55. Payments for Past Response Costs and Anticipated Costs to Be Incurred

a. Within forty-five (45) days after Respondent receives notice from EPA pursuant to Section XXXI that this Section is effective, Respondent shall pay to EPA \$1,961,000 for Past Response Costs and \$239,000 for EPA's use on anticipated response actions within the Site (total payment of \$2,200,000) in accordance with the payment instructions below or as EPA otherwise provides, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 09GU, and the EPA docket number for this Order.

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Payment by Wire Transfer shall be directed as follows:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Fedwire Message = "D 68010727 Environmental Protection Agency"

Payment by Check shall be directed as follows:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

b. EPA shall deposit all monies paid by Respondent to EPA pursuant to this Section in the Anaconda Copper Mine Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

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

David Wood
Superfund Accounting (PMD 6)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
wood.david@epa.gov

And to:

Nadia Hollan Burke
Superfund Division (SFD 8-2)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
hollan.nadia@epa.gov

Such notices shall reference the EPA Site ID #09GU and the EPA docket number for this action. The notice provided under this Section may be sent via electronic mail.

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56. Payments for Response Costs.

a. Respondent shall pay EPA all Response Costs not inconsistent with the NCP that EPA incurs in oversight or implementation of this Order. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an itemized cost summary (SCORPIOS Report). Respondent shall make all payments within forty-five (45) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 58 of this Order.

b. Respondent shall direct and provide notice for all payments required by this Paragraph in accordance with Paragraph 55, above.

57. Interest. In the event that any payment for Past Response Costs or Response Costs is not made by the due date provided in this Order, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs and Response Costs shall begin to accrue after the due date for payment and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII. Respondent shall direct and provide notice for all payments of Interest in accordance with Paragraph 55, above.

58. Respondent may contest payment of any Response Costs billed under Paragraph 56(a) if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within forty-five (45) days of receipt of the bill, and must be sent to the RPM. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 45-day period pay all uncontested Response Costs to EPA in the manner described in Paragraph 55. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the state of Nevada and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested 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, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondent shall pay the sums due, with accrued interest, to EPA in the manner described in Paragraph 55. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs, plus associated accrued interest, for which it did not prevail to EPA in the manner described in Paragraph 55. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the

exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Response Costs.

XVI. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

60. If Respondent objects to any EPA action taken pursuant to this Order, including bills for Response Costs, it shall notify EPA in writing of its objection(s) within seven (7) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have fifteen (15) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

61. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the branch level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

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

63. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent'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 Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent 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.

64. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is reasonably 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

65. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 66 and 67 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

66. Stipulated Penalty Amounts - Work Conducted by Respondent.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,500.00	15th through 30th day
\$5,000.00	31st day and beyond

b. Compliance Milestones. Compliance Milestones for this Paragraph include the submission of any work plan to achieve any objective of the Work; implementation of Work according to any final approved work plan and consistent with approved schedules; payment of Past Response Costs or Response Costs as required in this Order, and funding of the escrow account in accordance with Paragraph 58.

67. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 38-40:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$2,500.00	31st day and beyond

68. In the event that EPA assumes performance of all or any portion of the Work pursuant to Paragraph 78 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of 50% of EPA's present value estimate of the costs to be incurred for that portion of the Work, as determined by EPA upon or after work takeover; provided, however, that in no event shall the total stipulated penalties under this paragraph exceed a total of \$600,000.

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the branch level or higher, under Paragraph 61 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

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

71. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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The check shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 09GU, the EPA Docket Number for this action, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 55(c).

72. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

73. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

74. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations on which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order, or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 78. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

75. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work, for recovery of Past Response Costs, for recovery of Response Costs and for all costs that may be incurred for response actions addressing the Mine Office Building (identified in Appendix 3) and waste tires within the Site. This covenant not to sue shall take effect on the Effective Date and is conditioned on the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, all payments pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definitions of Past Response Costs or Response Costs;
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site that are not resolved by previous settlement with the United States or included within the definition of Past Response Costs.

78. Work Takeover. In the event that EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this CERCLA 09-2009-0010

Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

79. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Response Costs, or this Order, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site for which Past Response Costs or Response Costs were incurred or that are otherwise within the definition of Work or the scope of this Order, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim with respect to the Work, Past Response Costs, Response Costs or this Order against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 81 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 77 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

81. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

82. The waiver in Paragraph 81 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the criteria in Paragraph 81 if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting such criteria if EPA determines:

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

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

83. Respondent's Reservation of Rights. Respondent reserves and this Order is without prejudice to, all rights against the United States Department of the Interior, including any of its agencies or bureaus, including without limitation BLM or any other department or agency of the United States other than EPA, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613 relating to the Work, Past Response Costs, Response Costs or any other liability relating to the Site or releases of Waste Material from the Site.

XXII. OTHER CLAIMS

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

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

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

XXIII. CONTRIBUTION PROTECTION

The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(2), 42 U.S.C. §§ 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law for “matters addressed” in this Order. The “matters addressed” in this Order are the Work, Past Response Costs, and Response Costs. The Parties further agree that this Order constitutes an administrative settlement for the purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has, as of the Effective Date, resolved its liability to the United States for the matters addressed. Except as provided in Paragraphs 81 and 82, nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery. Nothing herein 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).

XXIV. INDEMNIFICATION

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

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

89. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement with 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, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract,

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

XXV. INSURANCE

90. At least seven (7) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of \$2,000,000 dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent 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 Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

91. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$8,000,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. A surety bond unconditionally guaranteeing payment or performance of the Work;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institutions(s) acceptable in all respects to EPA;
- c. A trust fund administered by a trustee acceptable in all respects to EPA;
- d. A written guarantee to pay or perform the Work by one or more parent or affiliate companies or Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. § 264.143(f);
- e. A demonstration that the Respondent satisfies the requirements of 40 C.F.R. § 264.143(f); or
- f. A policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment or performance of the Work.

92. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 91, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

93. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Paragraph 91(d) or 91(e) of this Order, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Order, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$8,000,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the Respondent or guarantor to EPA by means of passing a financial test.

94. If, after the Effective Date, Respondent can show that the estimated cost to complete the Work is below the amount set forth in Paragraph 91 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI. Respondent may reduce the amount of the security in accordance with EPA's written decision resolving the dispute.

95. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

96. The RPM may make modifications to any plan, schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

97. If Respondent seeks permission to deviate from any approved work plan, schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 96.

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

XXVIII. NOTICE OF COMPLETION OF WORK

99. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order (such as the payment of Response Costs or record retention), EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify any respective work plan as appropriate in order to correct such deficiencies. Respondent shall implement any such modified and approved work plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified work plan shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

100. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

101. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following are attached to and incorporated into this Order: Statement of Work (Appendix 1); Map showing location of the Site (Appendix 2); Map of Site Buildings (Appendix 3); Cost Summaries June 1, 2007 through December 31, 2008, for Operable Units 1-7 (Appendix 4).

XXX. EFFECTIVE DATE

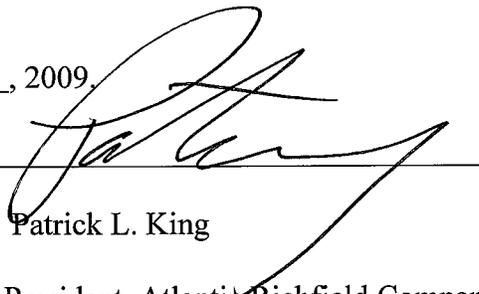
102. This Order shall be effective ten (10) days after the Order is signed by the Regional Administrator or his/her delegate, with the exception of Section XV, which shall be effective when EPA issues notice to Respondent that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Order.

XXXI. PUBLIC COMMENT

103. Final acceptance by EPA of Section XV (Payment of Response Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Order if comments received disclose facts or considerations that indicate that Section XV of this Order is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondent that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Order.

[Signatures on Following Pages]

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

Agreed this 14th day of April, 2009.
Signature For Respondent: 

By: Patrick L. King

Title: President, Atlantic Richfield Company

It is so ORDERED and Agreed this 21st day of April, 2009.

BY: R Blank DATE: 4/21/09
for Michael M. Montgomery
Assistant Director, Superfund Division
Region IX
U.S. Environmental Protection Agency

EFFECTIVE DATE: 5/1/09