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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 P4 PRODUCTION, LLC,)
)
 Defendant(s).)
 _____)

Civil Action No.

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, P4 Production L.L.C., violated Section 301(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1311(a).

The Complaint against Defendant alleges that Defendant discharged effluent containing selenium, cadmium, nickel, and zinc from the toe of the Horseshoe Overburden Area at the South Rasmussen Mine in southeast Idaho for a period of at least five years. The Complaint further alleges that discharge was not authorized by a National Pollutant Discharge Elimination System ("NPDES") permit.

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 301(a) and 309(b) of the Clean Water Act, 33

U.S.C. §§ 1311(a), 1319(b), and over the Parties. Venue lies in this District pursuant to 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because Defendant's principle place of business is located within this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 301 of the CWA, 33 U.S.C. § 1311(a).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall provide written notice of the prospective transfer to EPA Region 10, the United States Attorney for the District of Idaho, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act shall have the meanings assigned to them in the Act unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Complaint" shall mean the complaint filed by the United States in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;
- c. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- d. "Defendant" shall mean P4 Production L.L.C.;

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

f. "Effective Date" shall have the definition provided in Section XIV (Effective Date).

g. "Facility" shall mean the Horseshoe Overburden Area ("HOA") located at Defendant's South Rasmussen Mine in southeast Idaho.

h. "Leachate" shall mean, for purposes of this Consent Decree, the water that has infiltrated into the HOA, and which flows from the HOA.

i. "MSGP" shall mean the EPA NPDES Stormwater Multi-Sector General Permit for Industrial Activities, promulgated at 73 Fed. Reg. 56572 (Sept. 29, 2008), or its replacement.

j. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

k. "Parties" shall mean the United States and Defendant(s);

l. "Section" shall mean a portion of this Decree identified by a roman numeral;

m. "SR-E4" and "SR-E11" shall mean the sampling stations depicted in Appendix B.

n. "State" shall mean the State of Idaho.

o. "Unnamed Tributary" shall mean the unnamed tributary flowing from the wetlands at the toe of the Horseshoe Overburden Area at the P4 South Rasmussen Mine.

p. "United States" shall mean the United States of America, acting on behalf of EPA;

q. "Wetland" shall mean the wetland located at the toe of the HOA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Idaho, Washington Group Plaza IV, 800 Park Boulevard, Suite 600, Boise, Idaho 83712, Telephone: (208) 334-1211. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. P4 Production L.L.C., and shall reference the civil action number and DOJ case number 90-5-1-1-09868, to the United States in accordance with Section XIII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Defendant shall not allow the discharge of any surface runoff from the HOA that has come into direct contact with seleniferous waste rock contained in the HOA to the Unnamed Tributary or any other water of the United States until Defendant receives an individual NPDES permit for the discharge.

12. Defendant shall not discharge Leachate to the Unnamed Tributary or any other water of the United States until Defendant receives an individual NPDES permit for the discharge. Defendant shall continue to operate the Leachate collection system depicted in Appendix A as needed to prevent the discharge of Leachate to the Unnamed Tributary or any other Water of the United States for the life of this Consent Decree, except as modified by Paragraph 15 below.

13. Defendant shall collect and discharge the stormwater runoff from the surface of the HOA using the surface collection system depicted in Appendix A provided that the discharge of such stormwater is otherwise consistent with the requirements for discharge under this Consent Decree. The discharge shall be directed to the Wetland and Unnamed Tributary located at the toe of the HOA as depicted in Appendix A. Water from the Wetland shall be allowed to flow into the Unnamed Tributary. All discharges of stormwater from the HOA shall be covered by the MSGP, subject to the compliance schedule set forth in Paragraphs 16 through 18 below.

14. Defendant shall sample monitoring stations SR-E4 and SR-E11 and the Leachate being pumped to the evaporation pond for a period five years. Monitoring shall occur at least monthly during the months of April through September of each year. Defendant shall monitor for the following parameters: flow, selenium, cadmium, zinc, nickel and hardness. All metals shall be sampled for dissolved and total recoverable metals. Monitoring must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been approved by EPA. Defendant shall report the results of this monitoring to EPA in accordance with Paragraph 20 below. If there is no discernable flow at a monitoring station on the date of monitoring, no sample will be required and the report should state no flow.

15. Defendant may cease operation of the Leachate collection system and surface water collection systems described in Paragraphs 12 and 13 above if (1) remediation/reclamation work on the HOA is initiated under the authority of a final order issued by the State of Idaho or EPA and if that physical work would materially interfere with the operation of the collection system or (2) if an individual NPDES permit is issued for the discharge of treated Leachate to a water of the United States.

16. Compliance Schedule. Defendant shall have up to three years from effective date of this Decree to comply with the terms of the MSGP for discharges from the HOA. This three-year period does not apply to Leachate discharges from the HOA. During this three-year period, Defendant shall make all reasonable efforts through the use of best management practices, and consistent with the MSGP, to manage its discharge in order to reduce, and if possible, eliminate all exceedances of applicable water quality standards as measured at monitoring station SR-E4.

17. If, after three years, Defendant's stormwater discharges from the surface of the HOA are not meeting the terms of the MSGP, Defendant shall install treatment equipment necessary to bring the stormwater discharges into compliance with the MSGP. Such time for compliance may be extended upon written agreement by the parties.

18. The Compliance Schedule described in Paragraph 16 notwithstanding, Defendant's discharges from the surface of the HOA shall not exceed 15 ug/l for total selenium as measured at the discharge from the surface water collection system described in Paragraph 13.

19. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

20. Defendant shall submit the following reports:

a. Monthly Reporting. Within 30 Days after the end of each month in which sampling is required, after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII (Termination), Defendant shall submit to EPA the results of the sampling performed pursuant to Paragraph 14 above.

b. Non-Compliance Report. If Defendant fails to comply, or has reason to believe that it may fail to comply, with any requirement of this Consent Decree, Defendant shall notify the United States of such non-compliance and its likely duration, in writing, within ten business Days of the Day Defendant first becomes aware of the non-compliance, with an explanation of the likely cause of the non-compliance and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance. If the cause of the non-compliance cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the non-compliance and shall then submit an amendment to the report, including a report of the findings of its investigation, within 30 Days of the Day Defendant becomes aware of the cause of the non-compliance. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

21. Whenever any non-compliance with this Consent Decree or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the non-compliance or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

22. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

23. Each report submitted by Defendant under this Section shall be signed by a responsible corporate officer, as defined in 40 C.F.R. § 122.22(a)(1) , and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

24. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

25. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

26. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure) or otherwise excused by EPA. A violation includes failing to perform any obligation

required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

27. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

28. HOA Discharges. The following stipulated penalties apply for each day in which Defendant discharges surface runoff from the HOA that has come into direct contact with seleniferous waste rock contained in the HOA without an individual NPDES permit as set forth in Paragraph 11.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000	1st through 14th Day
\$1500	15th through 30th Day
\$2000	31st Day and beyond.

29. Leachate. For discharging Leachate in violation of Paragraph 12 or for failure to operate the Leachate collection system as required in Paragraph 12, the following stipulated penalties apply.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000	1st through 14th Day
\$1500	15th through 30th Day
\$2000	31st Day and beyond

30. Stormwater Surface Runoff. For failure to manage stormwater surface runoff from the HOA as provided in Paragraph 13, the following stipulated penalties apply for each day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1000	15th through 30th Day
\$1500	31st Day and beyond

31. Monitoring. For failure to conduct monitoring or report as required in Paragraph 14, Defendant shall pay a stipulated penalty of \$10,000 for each month in which it does not conduct sampling or report as required by Paragraph 14.

32. Water Quality Standards. After the end of the three-year compliance schedule set forth in Paragraphs 16 through 18, the following stipulated penalties shall apply to violation(s) of

the MSGP for discharges from the HOA that cause or contribute to an exceedance of an applicable water quality standard.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000	1st through 14th Day
\$1500	15th through 30th Day
\$2000	31st Day and beyond

33. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI of this Consent Decree (Reporting Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1st through 14th Day
\$400	15th through 30th Day
\$600	31st Day and beyond

34. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

35. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

36. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraph 34 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

38. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

39. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall

be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

40. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

41. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event: (a) as it is occurring; and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant

shall provide notice orally or by electronic or facsimile transmission to Eva DeMaria, EPA Region 10, demaria.eva@epa.gov, (206) 553-1970 (tel.), (206) 553-1280 (fax), within 24 hours of when Defendant first knew that the event might cause a delay. Within five business days thereafter, Defendant shall provide in writing to EPA 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; Defendant'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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the requirements of this Paragraph shall preclude Defendant 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. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

43. 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 Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA

will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. 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 Defendant in writing of its decision.

45. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 41 and 42, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be

considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 business Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

49. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

50. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt

of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

51. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

52. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 47 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 47, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 47. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

54. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

55. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

56. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractor's or agent's possession or control, or that come into its or its contractor's or agent's possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

57. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide 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 each 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 Defendant. However, no documents,

records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

58. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

59. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States for all violations alleged in the Complaint filed in this action through the date of lodging.

61. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 60. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 60. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by,

Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60 of this Section.

63. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Except as provided in Paragraph 16 above, Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1301(a), or with any other provisions of federal, State, or local laws, regulations, or permits.

64. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the

rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

65. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

66. Nothing in this Consent Decree shall constitute an admission of fact or law by any party, except as provided in Section I of this Consent Decree.

XII. COSTS

67. The Parties shall bear their own costs of this action, including attorney's fees, except that the United States shall be entitled to collect the costs (including attorney's fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

68. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-09868.

To EPA:

Eva DeMaria
U.S. Environmental Protection Agency
Region 10
1200 Sixth Ave., Suite 900, MS OCE-133
Seattle, Washington 98101

To Defendant(s):

Plant Manager
P4 Production, L.L.C.
1853 Highway 34 North
Soda Springs, ID 83276

Assistant General Counsel – Environmental
Monsanto Company
800 North Lindbergh Blvd
St. Louis, MO 63167.

69. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

70. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

71. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

72. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

73. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

74. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 52, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

75. The life of this Consent Decree shall be at least five (5) years. At the end of the five-year period, if Defendant has completed the requirements of Section V (Compliance Requirements) of this Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

76. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties

may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

77. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree (Dispute Resolution). However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 47 of Section IX (Dispute Resolution), until 60 days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

78. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

79. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that

he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

80. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

81. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

82. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

APPENDICES

83. The following appendices are attached to and part of this Consent Decree: "Appendix A" is the Leachate Collection System and Surface Collection System. "Appendix B" contains the Surface Water Sampling Stations.

Dated and entered this ___ day of _____, 2011.

[]
UNITED STATES DISTRICT JUDGE
District of Idaho

FOR THE UNITED STATES OF AMERICA:

Date: 4/11/2011

IGNACIA S. MORENO // -
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: 4/13/11 C

DAVID L. DAIN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-3644

Date: 4/15/2011 C

DEBORAH FERGUSON U
Assistant U.S. Attorney
District of Idaho
Washington Group Plaza IV
800 Park Boulevard, Suite 600
Boise, Idaho 83712
Telephone: (208) 334-1211
Fax: (208) 334-1414

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 4/18/11

CYNTHIA GILES, Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 4/12/11

ADAM M. KUSHNER, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 4/7/11

MARK POLLINS, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 3/25/11

AMANDA J. HELWIG, Attorney
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

FOR DEFENDANT P4 PRODUCTION L.L.C.

Date: March 21, 2011

Sheldon D. Alver
Plant Manager
P4 Production L.L.C.
1853 Highway 34
Soda Springs, Idaho 83276