

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA

Plaintiff,

v.

ATLANTIC RICHFIELD
COMPANY,

Defendant.

CIVIL ACTION NO. _____
2:16CV982DBP

CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND..... 3

II. JURISDICTION 4

III. PARTIES BOUND 5

IV. DEFINITIONS 5

V. GENERAL PROVISIONS..... 7

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT 9

VII. REMEDY REVIEW..... 10

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS..... 11

IX. ACCESS AND INSTITUTIONAL CONTROLS 12

X. REPORTING REQUIREMENTS 14

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS 14

XII. PROJECT COORDINATORS 15

XIII. REMEDIAL ACTION COMPLETION 16

XIV. EMERGENCY RESPONSE 16

XV. PAYMENTS FOR RESPONSE COSTS 17

XVI. INDEMNIFICATION AND INSURANCE 20

XVII. FORCE MAJEURE..... 21

XVIII. DISPUTE RESOLUTION 22

XIX. STIPULATED PENALTIES 24

XX. COVENANTS NOT TO SUE BY 27

XXI. COVENANTS BY SETTLING DEFENDANT 28

XXII. EFFECT OF SETTLEMENT, CONTRIBUTION PROTECTION 29

XXIII. ACCESS TO INFORMATION 30

XXIV. RETENTION OF RECORDS 31

XXV. NOTICES AND SUBMISSIONS 32

XXVI. EFFECTIVE DATE 34

XXVII. RETENTION OF JURISDICTION..... 34

XXVIII. DOCUMENTS INCORPORATED BY REFERENCE..... 34

XXIX. MODIFICATION..... 34

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 34

XXXI. SIGNATORIES/SERVICE 35

XXXII. FINAL JUDGMENT..... 35

I. BACKGROUND

A. The United States of America (United States), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607, against the Atlantic Richfield Company (Settling Defendant).

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the International Smelting and Refining Superfund Site (Site), located approximately three miles east of the town of Tooele, in Tooele County, Utah, together with accrued interest; and (2) performance of response work by the Settling Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (NCP).

C. In accordance with the NCP and section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Utah (State) of negotiations with potentially responsible parties and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree. The State is not a party to the Consent Decree.

D. By entering into this Consent Decree, the Settling Defendant does not admit any liability arising out of the transactions or occurrences that were alleged or could have been alleged, in the complaint in the above-captioned action nor does it admit or acknowledge that a release or threatened release of hazardous substances at or from the Site has occurred or, alternatively that any such release constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

E. Pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, the EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 27, 2000, 65 Fed. Reg. 46096.

F. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, on September 18, 2001, Settling Defendant commenced a remedial investigation and feasibility study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430 (Administrative Order on Consent for RI/FS, EPA Docket No. CERCLA-08-2001-12).

G. From 2003 to 2008 the EPA issued four unilateral administrative orders under section 106 of CERCLA, 42 U.S.C. § 9606, to Settling Defendant. These required Settling Defendant to perform removal response actions on residential yards and a former railroad right of way adjacent to the site of the former smelter and on the smelter property itself. Settling Defendant completed those removal response actions between 2003 and 2008.

H. Settling Defendant completed an RI report in August, 2004 and an FS report in March, 2007. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, the EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 14, 2007, in the Tooele Transcript, a major local newspaper of general circulation. The EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

I. The EPA selected the remedial action for the Site which is embodied in a final record of decision (ROD), executed on September 27, 2007, on which the State had a reasonable opportunity to review and comment. The ROD includes a responsiveness summary to the public comments.

J. The ROD provided that there would be no additional construction work beyond the removal actions performed between 2003 and 2008 and provided further for monitoring of groundwater, operation and maintenance, and the implementation of certain Institutional Controls.

K. On March 7, 2011, the EPA issued to Settling Defendant Administrative Order U.S.EPA Docket No. CERCLA-08-2011-0004. This directed Settling Defendant to perform the monitoring of groundwater, implementation and maintenance of Institutional Controls, and operation and maintenance provided for in the ROD.

L. On May 26, 2011, the EPA issued a Remedial Action Completion Report for the Site, stating that all areas of concern identified in the NPL listing for the Site were successfully remediated, and identifying the LTO&M Plan as the controlling document for operation and maintenance at the Site.

M. On June 21, 2011, the EPA issued a Final Closeout Report, documenting that all actions required under the ROD had been completed, and identifying the LTO&M Plan as the controlling document for operation and maintenance at the Site.

N. On August 10, 2011, the EPA published in the Federal Register a Notice of Deletion of the Site from the National Priorities List. The deletion was effective October 11, 2011.

O. Settling Defendant is responsible for ongoing implementation of the LTO&M Plan.

P. Based on the information presently available to the EPA, the EPA believes that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and the documents incorporated hereunder.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the documents incorporated hereunder, the following definitions shall apply:

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

“Consent Decree” shall mean this Decree and all documents incorporated hereunder (listed in Section XXVIII). In the event of conflict between this Decree and any document incorporated hereunder, this Decree shall control.

“Cost Documentation” shall mean the regionally prepared cost summary documentation, currently known as a SCORPIOS report.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 90.

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date relating to the Site in reviewing, or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree,

including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV, and Paragraph 73 of Section XX. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendant has agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from March 1, 2015, to the Effective Date of this Consent Decree.

“Institutional Controls” shall mean non-engineered instruments, such as administrative and/or legal controls that are intended to help to minimize the potential for human exposure to contamination and/or to protect the integrity of the remedy by restricting land and/or resource use and/or by providing information that helps modify or guide human behavior at the Site.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between March 1, 2015, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“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.

“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.

“LTO&M Plan” shall mean the International Smelter NPL Site Long Term Operation and Maintenance Plan, signed February 4, 2010, (SEMS Document Number 1151735-R8). The LTO&M Plan is incorporated into this Consent Decree by reference and is an enforceable part of this Consent Decree.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the remedial action as required under the LTO&M Plan.

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

“Parties” shall mean the United States and Settling Defendant.

“Past Response Costs” shall mean all costs, not previously collected by EPA, including, but not limited to, direct or indirect costs, that the United States paid at or in connection with the Site as of February 28, 2015, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

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

“Plaintiff” shall mean the United States.

“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).

“Real Property” shall mean any real property that is located within the Site.

“Record of Decision” or “ROD” shall mean the EPA record of decision relating to the Site signed on September 27, 2007 by the Regional Administrator, EPA Region 8, (SEMS Document Number 1059503-R8) and all attachments thereto. The ROD is incorporated into this Consent Decree by reference.

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

“SEMS” shall mean the Superfund Enterprise Management System.

“Settling Defendant” shall mean the Atlantic Richfield Company.

“Site” shall mean the International Smelting and Refining Superfund Site, encompassing approximately 3,500 acres, located approximately three miles east of Tooele, in Tooele County, Utah, and the areas addressed by the removal actions referred to in Paragraph G above.

“State” shall mean the State of Utah.

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

“Transfer” shall mean to, directly or indirectly, sell, assign, convey, lease, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment conveyance, pledge or other disposition of any interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

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

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous materials” or “hazardous substances” as defined in the Utah Hazardous Substances Mitigation Act, Utah Code Ann., Section 19-6-301, *et seq.*

“Work” shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, except those required by Section XXIV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the implementation of the LTO&M Plan at the Site by Settling Defendant, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, and all work plans and

other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by the EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

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

8. Permits.

a. As provided in section 121(e) of CERCLA and section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. Notice to Successors-in-Title.

a. Settling Defendant has filed a notice with the Recorder's Office, Tooele County, State of Utah, which provides notice to all successors-in-title that the Real Property is part of the Site.

b. At least 60 days prior to the Transfer to any party unrelated to the Settling Defendant of any interest in Real Property or any portion thereof including, but not limited to, fee interests, leasehold interests, and mortgage interests, Settling Defendant shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in Real Property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in Real Property has been conveyed that confers a right to enforce restrictions on the use of such Real Property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls).

c. At least 60 days prior to such Transfer of Real Property, Settling Defendant shall also give written notice to the EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

d. In connection with any Transfer of Real Property by Settling Defendant or its successor in interest, all instruments used in connection therefore shall reserve all rights for

Settling Defendant and EPA, as applicable, for the purposes of conducting any activity related to this Consent Decree, including but not limited to a right of access and compliance with all Institutional Controls and O&M obligations.

e. In the event of any such Transfer of Real Property, Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and Institutional Controls, as well as to abide by such Institutional Controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by Settling Defendant. In no event shall such Transfer release or otherwise affect the liability of Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of the EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), IX (Access and Institutional Controls), and XIV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor. Prior to the lodging of this Consent Decree, Settling Defendant provided the EPA with information sufficient to demonstrate the qualifications of Anderson Engineering, who will direct or supervise the Work as the Supervising Contractor. If at any time after lodging of the Consent Decree, Settling Defendant proposes to change the Supervising Contractor, Settling Defendant shall notify the EPA in writing of the name, title, and qualifications of each contractor proposed as the Supervising contractor and shall obtain an authorization to proceed from the EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If the EPA disapproves a proposed Supervising Contractor, the EPA will notify Settling Defendant in writing. Settling Defendant shall submit to the EPA a list of contractors, including the qualifications of each contractor that would be acceptable to them within 30 days of receipt of the EPA's disapproval of the contractor previously proposed. The EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify the EPA of the name of the contractor selected within 21 days of the EPA's authorization to proceed.

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

11. Operation and Maintenance.

a. Settling Defendant has previously submitted to the EPA and the State the LTO&M Plan. Settling Defendant has previously submitted to the EPA and the State a Health and Safety Plan for field activities required by the LTO&M Plan, which conforms to the

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

b. Settling Defendant shall implement the activities required under the LTO&M Plan. Settling Defendant shall submit to the EPA and the State all plans, submittals, or other deliverables required under the approved LTO&M Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

12. Settling Defendant shall continue to implement the LTO&M Plan as required under this Consent Decree.

13. Modification of LTO&M Plan.

a. If the EPA determines that modification of the LTO&M Plan is necessary to maintain its integrity, the EPA may require that such modification of the LTO&M Plan be incorporated in the appropriate work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. If Settling Defendant objects to any modification determined by the EPA to be necessary pursuant to this Paragraph, Settling Defendant may seek dispute resolution pursuant to Section XVIII (Dispute Resolution), Paragraph 55 (record review). The relevant work plans shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any work required by any modifications incorporated in the work plans developed in accordance with this Paragraph.

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

VII. REMEDY REVIEW

14. Periodic Review. Settling Defendant shall conduct any studies and investigations requested by the EPA in order to permit the EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by section 121(c) of CERCLA and any applicable regulations.

15. Opportunity To Comment. Settling Defendant and, if required by sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by the EPA as a result of the review conducted pursuant to section 121(c) of CERCLA and to submit written comments for the record during the comment period.

16. Settling Defendant's Obligation to Perform Further Response Actions. If the EPA selects further response actions for the Site, Settling Defendant shall undertake such further response actions to the extent that the reopener conditions in Paragraph 70 (United States' Reservations) are satisfied. Settling Defendant may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute (1) the EPA's determination that the reopener conditions of Paragraph 70 of Section XX (Covenants Not To Sue by Plaintiff) are satisfied, (2) the EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) the EPA's selection of the further response actions. Disputes pertaining to whether the

remedial action is protective or to the EPA's selection of further response actions shall be resolved pursuant to Paragraph 55 (record review).

17. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 16, it shall submit a plan for such work to the EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by the EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

18. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by the EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant submitted to the EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan (QAPP) that is consistent with the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by the EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by the EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated September 2015, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by the EPA, after opportunity for review and comment by the State, Settling Defendant may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by the EPA. The EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP previously approved by the EPA.

19. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by the EPA or its authorized representatives. Settling Defendant shall notify the EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by the EPA. In addition, the EPA shall have the right to take any additional samples that the EPA deems necessary. Upon request, the EPA shall allow Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

20. Settling Defendant shall submit to the EPA three copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless the EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

22. Settling Defendant has previously granted access to its property at the Site as has been necessary to allow the EPA to oversee implementation of the Consent Decree including establishment and maintenance of Institutional Controls, monitoring of groundwater, and operation and maintenance of the previously completed response actions within the Site. Settling Defendant shall:

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

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPPs;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 73 of this Consent Decree;
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXIII (Access to Information);

(9) Assessing Settling Defendant's compliance with this Consent Decree;

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and

(11) Implementing, monitoring and enforcing any Institutional Controls.

b. Commencing on the date of lodging of this Consent Decree, refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed or protected pursuant to this Consent Decree.

23. Settling Defendant has previously obtained access to all properties necessary to conduct the Work. However, if in the future the Site, or any other real property where access and/or Institutional Controls are needed to implement this Consent Decree, is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendant, as well as for the United States on behalf of the EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 22.a of this Consent Decree; and

b. an agreement, enforceable by Settling Defendant and the United States, to refrain from using the Site or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed or protected pursuant to this Consent Decree.

24. For purposes of Paragraph 23 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, Institutional Controls. If any access required by Paragraph 23.a of this Consent Decree is not obtained within 45 days of the event triggering the need for access, Settling Defendant shall promptly notify the United States and the State in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 22 or 23 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or Institutional Controls, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XV (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or Institutional Controls, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

25. If the EPA determines that additional Institutional Controls in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-

interference therewith, Settling Defendant shall cooperate with the EPA's efforts to secure such governmental controls.

26. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

27. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to the EPA and the State copies of written annual progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous year; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous year; (c) identify all work planned for the next year; (d) describe all problems encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

28. Settling Defendant shall submit 3 copies of all plans, reports, and data required by the LTO&M Plan, or any other approved plans to the EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit 1 copy of all such plans, reports and data to the State. Upon request by the EPA, Settling Defendant shall submit in electronic form all portions of any report or other deliverable Settling Defendant is required to submit pursuant to the provisions of this Consent Decree.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

30. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, the EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendant modify the submission; or (e) any combination of the above. However, the EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within fifteen (15) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

31. In the event of approval, approval upon conditions, or modification by the EPA, pursuant to Paragraph 30(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by the EPA subject only to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by the EPA. In the event that

the EPA modifies the submission to cure the deficiencies pursuant to Paragraph 30(c) and the submission has a material defect, the EPA retains its right to seek stipulated penalties, as provided in Section XIX (Stipulated Penalties).

32. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 30(d), Settling Defendant shall, within fifteen (15) days or such longer time as specified by the EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XIX (Stipulated Penalties), shall accrue during the fifteen (15) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 33 and 34.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 30(d), Settling Defendant shall proceed, at the direction of the EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XIX (Stipulated Penalties).

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

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

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

XII. PROJECT COORDINATORS

36. Settling Defendant and the EPA have designated their respective Project Coordinators and Alternate Project Coordinators for the Site, the names, addresses and telephone numbers of which are noted in Section XXV (Notices and Submissions). If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless

impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by the EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinator shall not be an attorney. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

XIII. REMEDIAL ACTION COMPLETION

38. Completion of the Remedial Action. The Site has been deleted from the National Priorities List. On May 26, 2011, the EPA issued a Remedial Action Completion Report for the Site, stating that all work required under the ROD had been completed and on June 21, 2011, the EPA issued a Final Closeout Report, stating that all actions required under the ROD had been completed. Both the Remedial Action Completion Report and the Final Closeout Report identify the LTO&M Plan as the controlling document for ongoing operation and maintenance at the Site.

XIV. EMERGENCY RESPONSE

39. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 39, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, the EPA's Alternate Project Coordinator. If none of these persons is available, Settling Defendant shall notify the EPA Emergency Response Program, Region 8. Settling Defendant shall take such actions in consultation with the EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and the EPA takes such action instead, Settling Defendant shall reimburse the EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payments for Response Costs).

40. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order

from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XX (Covenants Not to Sue by Plaintiff).

XV. PAYMENTS FOR RESPONSE COSTS

41. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendant shall pay to the EPA \$560,011.41 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, and in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Utah after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Cord Harris
Liability Business Manager
Remediation Management, BP
201 Helios Way, 6.374C
Houston, TX 77079
Office: (281) 892-4373
Cell: (424) 634-2934
cord.harris@bp.com

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and the EPA in accordance with Section XXV (Notices and Submissions).

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

c. The total amount to be paid by Settling Defendant pursuant to Subparagraph 41.a shall be deposited in the International Smelting and Refining Site 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 the EPA to the EPA Hazardous Substance Superfund.

42. Payments for Future Response Costs.

a. Settling Defendant shall pay to the EPA all Future Response Costs not inconsistent with the National Contingency Plan. In the year following the Effective Date and in other years where Future Response Costs are paid, the United States will exercise best efforts to send Settling Defendant an annual bill, including Cost Documentation, requiring payment of Future Response Costs. Any failure by the United States to provide such annual billing and/or complete Cost Documentation, however, shall not relieve Settling Defendant of any obligation under this Consent Decree. Settling Defendant shall make all payments within 45 days of

Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 50. Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's check(s), wire transfer, or on-line payment made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, International Smelting & Refining Special Account, Site EPA Site/Spill ID Number 086Y, and DOJ Case Number 90-11-3-07569/1.

For certified or cashier's check, payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

Regular Mail:

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

Express Mail (Fed Ex, Airborne, etc.):

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA: 02103004
Account: 68010727
SWIFT address:FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Online Payment:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open EPA Miscellaneous Payments form and complete required fields.

b. At the time of payment, Settling Defendant shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

Dana Anderson, NWD

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

and to:

Maureen O'Reilly
Enforcement Specialist
U.S. Environmental Protection Agency
(8ENF-RC)
1595 Wynkoop Street
Denver, CO 80202-1129

c. At the time of payment, Settling Defendant shall also send notice that payment has been made to the United States, to the EPA and to the Regional Financial Management Officer, in accordance with Section XXV (Notices and Submissions), and shall reference the CDCS Number, Site/Spill ID Number 86Y, and DOJ Case Number 90-11-3-07569/1.

d. The total amount to be paid by Settling Defendant pursuant to Subparagraph 42.a shall be deposited in the International Smelting & Refining Site 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 the EPA to the EPA Hazardous Substance Superfund.

43. Settling Defendant may contest payment of any Future Response Costs under Paragraph 42 if it determines that the United States has made an accounting error or included a cost item that is not within the definition of Future Response Costs, or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP or that the United States has failed to provide complete Cost Documentation. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the United States pursuant to Section XXV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 45 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 42. Simultaneously, Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendant shall send to the United States, as provided in Section XXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs. Settling Defendant shall promptly initiate the dispute resolution procedures in Section XVIII (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 42. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the

United States in the manner described in Paragraph 42; Settling Defendant 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 XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

44. In the event that the payments required by Subparagraph 41.a are not made within 30 days of the Effective Date or the payments required by Paragraph 42 are not made within 45 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs which are paid late shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 59. Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 42.

XVI. INDEMNIFICATION AND INSURANCE

45. Settling Defendant's Indemnification of the United States.

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

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 46, and shall consult with Settling Defendant prior to settling such claim.

46. Settling Defendant 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 between Settling Defendant and any person for performance of the Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant 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, agreement, or arrangement between Settling Defendant and any person for performance of the Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

47. For the duration of this Consent Decree, Settling Defendant 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 Settling Defendant in furtherance of this Consent Decree. Prior to lodging of this Consent Decree, Settling Defendant provided to the EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVII. FORCE MAJEURE

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

49. 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, Settling Defendant shall notify orally the EPA's Project Coordinator or, in his or her absence, the EPA's Alternate Project Coordinator or, in the event both of the EPA's designated representatives are unavailable, the Director of the Superfund Remedial Response Program, Office of Ecosystems Protection and Remediation, EPA Region 8, within forty-eight (48) hours of when Settling Defendant first knew that the event might cause a delay. Within seven (7) days thereafter, Settling Defendant shall provide in writing to the EPA and the State 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; Settling 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 Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling 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. Settling Defendant

shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known

50. If the 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 the EPA in writing for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If the EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify Settling Defendant in writing of its decision. If the EPA agrees that the delay is attributable to a force majeure event, the EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

51. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), it shall do so no later than 15 days after receipt of the EPA's notice. In any such proceeding, Settling 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 Settling Defendant complied with the requirements of Paragraphs 48 and 49, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to the EPA, the State, and the Court.

XVIII. DISPUTE RESOLUTION

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

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

54. Statements of Position.

a. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 55 or Paragraph 56.

b. Within thirty (30) days after receipt of Settling Defendant's Statement of Position, the EPA shall serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the EPA. The EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 55 or 56. Within thirty (30) days after receipt of the EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between the EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 55 or 56, the Parties to the dispute shall follow the procedures set forth in the paragraph determined by the EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 55 and 56.

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

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

b. The Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 55.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 55.c and d.

c. Any administrative decision made by the EPA pursuant to Paragraph 55.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on the EPA within 10 days of receipt of the EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation, EPA Region 8 is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the EPA's decision shall be on the administrative record compiled pursuant to Paragraph 55.a.

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

a. Following receipt of Settling Defendant’s Statement of Position submitted pursuant to Paragraph 54, the Assistant Regional Administrator of the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final decision resolving the dispute. The Assistant Regional Administrator's decision shall be binding on Settling Defendant unless, within 10 days of receipt of the decision, Settling Defendant files with the Court and serves on the EPA a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant’s motion.

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

57. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless the EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 66. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XIX. STIPULATED PENALTIES

58. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraph 59 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVII (Force Majeure). “Compliance” by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by the EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

59. Stipulated Penalty Amounts.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 59.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$3,500	15th through 30th day
\$5,000	31st day and beyond

b. Compliance Milestones. Failure to comply with any of the requirements in Section VI (Performance of the Work by Settling Defendant), Section VII (Remedy Review),

Section VIII (Quality Assurance, Sampling, and Data Analysis), Section IX (Access and Institutional Controls), Section X (Reporting Requirements), Section XI (EPA Approval of Plans and Other Submissions), Section XII (Project Coordinators), Section XIII (Emergency Response), and Section XIV (Payments for Response Costs), Section XVI (Indemnification and Insurance), Section XXIII (Access to Information), Section XXIV (Retention of Records), and Section XXV (Notices and Submissions).

60. In the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 73 of Section XX (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$100,000.00.

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after the EPA's receipt of such submission until the date that the EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, under Paragraph 55.b or 56.b of Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to the EPA's Statement of Position is received until the date that the Assistant Regional Administrator issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XVIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

63. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Defendant's receipt from the EPA of a demand for payment of the penalties, unless Settling Defendant invokes the dispute resolution procedures under Section XVIII (Dispute Resolution). All payments to the United States under this Section shall be wired to: Federal Reserve Bank of New York, ABA: 021030004, Account Number: 68010727; shall indicate that the payment is for stipulated penalties; and shall reference the EPA Region and Site/Spill ID number: 086Y, the DOJ Case Number 90-11-3-07569/1, and the name and address of the party making payment. Notice of payments made pursuant to this Section shall be sent to the United States as provided in Section XXV (Notices and Submissions), and to:

Maureen O'Reilly
Enforcement Specialist
U.S. Environmental Protection Agency
(8ENF-RC)
1595 Wynkoop Street
Denver, CO 80202-1129

and to:

Joe Poetter
Financial Management Section
U.S. Environmental Protection Agency
(8TMS-F)
1595 Wynkoop Street
Denver, CO 80202-1129

64. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

65. Penalties shall continue to accrue as provided in Paragraph 61 during any dispute resolution period, but need not be paid until the following:

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

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

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

66. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 63.

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

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

XX. COVENANTS NOT TO SUE BY PLAINTIFF

69. In consideration of the actions that have been and will continue to be performed and the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 70 and 72 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to sections 106 and 107(a) of CERCLA and section 7003 of RCRA relating to the Site. These covenants not to sue shall take effect upon the receipt by the EPA of the payments required by Paragraph 41.a of Section XV (Payments for Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend to Settling Defendant's officers, directors and employees, but only to the extent that the liability of these officers, directors and employees arises: (i) solely from their status as such; and (ii) from the same nucleus of facts that gave rise to Settling Defendant's liability resolved under this Consent Decree.

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

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, subsequent to the effective date of this Consent Decree:

(1) conditions at the Site, previously unknown to the EPA, are discovered, or

(2) information, previously unknown to the EPA, is received, in whole or in part, and the EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the remedial action is not protective of human health or the environment.

71. For purposes of Paragraph 70, the information and the conditions known to the EPA shall include only that information and those conditions known to the EPA as of the date of the effective date of this Consent Decree, including the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by the EPA pursuant to the requirements of this Consent Decree.

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

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by the EPA, after signature of this Consent Decree by Settling Defendant;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability; and
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

73. Work Takeover. (a) In the event the EPA determines that Settling Defendant has (i) ceased implementation of any portion of the Work, or (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, the EPA may issue a written notice ("Work Takeover Notice") to Settling Defendant. Any Work Takeover Notice issued by the EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of 10 days within which to remedy the circumstances giving rise to the EPA's issuance of such notice.

(b) If, after expiration of the 10-day notice period specified in Paragraph 73(a), Settling Defendant has not remedied to the EPA's satisfaction the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, the EPA may at any time thereafter assume the performance of all or any portions of the Work as the EPA deems necessary ("Work Takeover"). The EPA shall notify Settling Defendant in writing (which writing may be electronic) if the EPA determines that implementation of a Work Takeover is warranted under this Paragraph 73(b).

(c) Settling Defendant may invoke the procedures set forth in Section XVIII (Dispute Resolution), Paragraph 55, to dispute the EPA's implementation of a Work Takeover under Paragraph 73(b). However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, the EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 73(b) until the earlier of (i) the date that Settling Defendant remedies, to the EPA's satisfaction, the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVIII (Dispute Resolution), Paragraph 55, requiring the EPA to terminate such Work Takeover.

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

XXI. COVENANTS BY SETTLING DEFENDANT

75. Covenant Not to Sue. Subject to the reservations in Paragraph 76, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action

against the United States with respect to the Site, past response actions, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

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

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA sections 107 or 113 related to the Site, or any claims arising out of response actions at or in connection with the Site, including any claim under the United States 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.

Except as provided in Paragraph 82 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 70 and 72(b) - (d) or 72(g), but only to the extent that Settling Defendant's claims arise from the response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

76. Settling Defendant's Reservation of Rights. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on the EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

XXII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

78. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

79. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or

claims as provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2) or as may be otherwise provided by law for matters addressed in this Consent Decree. The matters addressed in this settlement are the Remedial Action, response actions taken or to be taken, Work conducted or to be conducted, O & M activities, and all response costs incurred and to be incurred by the United States or any other person with respect to the Site. The matters addressed in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against the Settling Defendant coming within the scope of such reservations.

80. Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it shall notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

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

82. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling 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-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; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XX (Covenants Not to Sue by Plaintiff).

XXIII. ACCESS TO INFORMATION

83. Subject to the assertion of privilege claims in accordance with Paragraph 84, Settling Defendant shall provide to the EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to the 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 subject to their right to counsel or any other right under state and federal law.

84. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to the EPA under this Consent Decree to the extent permitted by and in accordance with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by the 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 the EPA, or

if the EPA has notified Settling Defendant 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 Settling Defendant.

b. Settling Defendant 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 Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the 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 Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

85. 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.

XXIV. RETENTION OF RECORDS

86. Until five years after the effective date of this Consent Decree, Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendant who is potentially liable as owner or operator of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

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

88. Settling Defendant 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 the United States regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and section 3007 of RCRA, 42 U.S.C. 6927.

XXV. NOTICES AND SUBMISSIONS

89. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the EPA, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07569/1

As to the EPA:

Erna Waterman
Project Coordinator
U.S. Environmental Protection Agency
(8ERP-SR)
1595 Wynkoop Street
Denver, CO 80202-1129

Stanley Christensen
Alternate Project Coordinator
U.S. Environmental Protection Agency
(8ERP-SR)
1595 Wynkoop Street
Denver, CO 80202-1129

Erin Agee
Enforcement Attorney
U.S. Environmental Protection Agency
(8ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

Maureen O'Reilly
Enforcement Specialist
U. S. Environmental Protection Agency
(ENF-RC)
1595 Wynkoop Street
Denver CO 80202-1129

Regional Financial Management Officer:

Joe Poetter
Financial Management Section
U.S. Environmental Protection Agency
(8TMS-F)
1595 Wynkoop Street
Denver, CO 80202-1129

As to Settling Defendant:

Cord Harris
Liability Business Manager
Remediation Management, BP
201 Helios Way, 6.374C
Houston, TX 77079

Jack Oman
Operations Project Manager
Atlantic Richfield Company
6 Centerpointe Drive
La Palma, CA 90071

Nathan Block
Senior Counsel, Litigation
BP America, Inc.
501 Westlake Park Boulevard
Houston, Texas 77079

XXVI. EFFECTIVE DATE

90. The effective date of this Consent Decree shall be 60 days from the date upon which this Consent Decree is entered by the Court, unless an appeal of the entry and judgment is filed during the 60-day period. If an appeal is taken, the Effective Date shall mean the date on which the District Court's judgment is affirmed.

XXVII. RETENTION OF JURISDICTION

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

XXVIII. DOCUMENTS INCORPORATED BY REFERENCE

92. The following documents are incorporated by reference into this Consent Decree:

The LTO&M Plan, SEMS Document Number 1151735-R8

The ROD, SEMS Document Number 1059503-R8

XXIX. MODIFICATION

93. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA and Settling Defendant. All such modifications shall be made in writing.

94. Except as provided in Paragraph 13 (Modification of Work Plans), no material modifications shall be made to the LTO&M Plan, or other work plan to be approved in the future pursuant to any requirement of this Consent Decree, without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 CFR 300.435(c)(2)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the LTO&M Plan, or other work plan to be approved in the future pursuant to any requirement of this Consent Decree that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 CFR 300.435(c)(2)(ii), may be made by written agreement between the EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Settling Defendant.

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

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

96. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or

considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

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

98. Upon entry of this Consent Decree, the EPA will terminate administrative orders Docket Nos. CERCLA-08-2001-12, CERCLA-08-2002-0002, CERCLA-08-2004-0016, CERCLA-08-2005-0001, CERCLA-08-2006-0010, and CERCLA-08-2011-0004.

XXXI. SIGNATORIES/SERVICE

99. Each undersigned representative of Settling 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 such Party to this document.

100. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

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

XXXII. FINAL JUDGMENT

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

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


SO ORDERED THIS _____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Atlantic Richfield Company, relating to the International Smelting & Refining Superfund Site.

FOR THE UNITED STATES OF AMERICA


Date



Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

9/14/16

Date



James D. Freeman
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294

8/5/14
Date

Andrea Madigan

Andrea Madigan
CERCLA Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

8/18/16
Date

Aaron Urdiales

Aaron Urdiales
Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

8/11/16
Date


Bill Murray

Bill Murray
Director
Office of Ecosystems Protection and
Remediation
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Atlantic Richfield Company, relating to the International Smelting & Refining Superfund Site.

FOR ATLANTIC RICHFIELD COMPANY

July 19, 2016
Date

Signature: 
Name: Lisa A. Smith
Title: Vice President
Address: Atlantic Richfield Company
201 Helios Way 6.378A
Houston, Texas 77079

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

Name: Nathan Block
Title: Senior Counsel, Litigation
Address: BP America, Inc.
501 Westlake Park Boulevard
Houston, Texas 77079
Ph. No: (281) 366-7418