

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,
and the STATE OF MISSOURI,

Plaintiffs,

v.

DELTA ASPHALT, INC.,

Defendant.

Civil Action No. 1:21-cv-29 SNLJ

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. 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, 42 U.S.C. §§ 9606 and 9607 (CERCLA), against Delta Asphalt, Inc. (“Settling Defendant”) seeking injunctive relief and reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at Operable Unit 5 (“the Site”) of the Madison County Mines Superfund Site in Madison County, Missouri.

B. The State of Missouri (the “State”) joined as a co-Plaintiff in the United States complaint against the defendant in this Court. The State alleges that the Settling Defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Missouri Hazardous Waste Management Law, Mo. Rev. Stat. §§ 260.350—260.430, and § 260.510. The State seeks injunctive relief and reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Site.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

D. The Site is Operable Unit 5 of the Madison County Mines Superfund Site and consists of the former Catherine Mine and Skaggs Tailings subsites, the Little Saint Francis River Tailings and Mill subsite, as well as mine waste, soil, pond sediment, groundwater, and residential properties affected by a former overhead tram from the Catherine Mine to the Little Saint Francis River Tailings and Mill area. The Site also includes surface water, floodplain soil, sediment, and groundwater affected by the Catherine Mine and Skaggs Tailings mine waste as well as nearby mine works’ locations and outflows. EPA completed a focused Feasibility Study and Record of Decision for the Site in 2012 and completed the Remedial Design in 2014. Remedial action by EPA is underway and scheduled for completion in 2020. The remedial action consists of consolidation and capping of historic mine wastes left on the Site as well as lead-contaminated soil from residential and recreational areas of Operable Unit 3 of the Madison County Mines Superfund Site. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future. The State has incurred and will incur additional response costs in the future.

E. Lead mining and processing occurred at the Catherine Mine subsite beginning around 1900 and ended at some point before 1971.

F. Settling Defendant is the current owner of a portion of the former Catherine Mine subsite consisting of 12.57 acres (the “Affected Property”). Settling Defendant operated a hot asphalt plant on a 140-acre portion of the subsite beginning in 1978 and purchased the property in 1988. At some point prior to 1995, Settling Defendant ceased using the property and has not used it since that time.

G. In or about September of 2002, EPA and Settling Defendant entered into an agreement allowing EPA to use Settling Defendant's property as a repository for lead-contaminated soil from residential and recreational areas of nearby Fredericktown as part of EPA removal and remedial actions. EPA estimates that the use of Settling Defendant's property in lieu of transporting and disposing of this contaminated soil at the nearest commercial landfill available for disposal has saved the United States a significant amount of money in response costs at the Site.

H. In 2011, Settling Defendant sold all but 12.57 acres of its property at the Catherine Mine subsite and executed an environmental covenant with activity and use restrictions appropriate to the Site as part of the property transfer to the new property owner. Therefore, Settling Defendant is the current owner of a portion of the former Catherine Mine subsite consisting of the Affected Property. A large portion of the repository for the lead-contaminated soil sits on the Affected Property and occupies the majority of the 12.57 acres. The remaining portion of the repository is on the property that Settling Defendant conveyed in 2011.

I. Routine inspection and long-term maintenance for the final capped repository on the Affected Property will be the responsibility of, and will be performed by, the State. Any activities performed by either EPA or the State for which access is granted herein, shall be at their own expense and those costs will not be sought from Settling Defendant. Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), states that no federal, state, or local permit shall be required for any portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with that section. The capped repository on the Affected Property was constructed by EPA as part of a remedial action that was selected and carried out in compliance with Section 121(e) and was conducted entirely onsite. With the exception of its compliance with the requirements and reservations in Section VI (Property Requirements) and Section X (Reservation of Rights) of this Consent Decree, Settling Defendant is not responsible for the repository and cap on the Affected Property.

J. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

K. Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

L. The United States, the State, and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is 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, 1367, and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, 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 entry or 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 is binding upon the United States and the State, and upon Settling Defendant and its successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that 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 its appendices, the following definitions shall apply:

“Affected Property” means Settling Defendant's real property at the Site and any other real property, owned or controlled by Settling Defendant, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the property described in Appendix A. At the time of the execution of this Consent Decree, the property described in Appendix A is the only known property owned by Settling Defendant at the Site.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices and figures attached hereto. In the event of conflict between this Consent Decree and any appendix or figure, this Consent Decree shall control.

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

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which approval of this Consent Decree is recorded on the Court's docket.

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

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

“Existing Contamination” shall mean any hazardous substances, pollutants, or contaminants present or existing on or under the Site as of the Effective Date, including all hazardous substances in the capped repository on the Affected Property.

“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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“MoDNR” shall mean the Missouri Department of Natural Resources and its successor departments, agencies, or instrumentalities.

“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.

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

“Parties” shall mean the United States, the State of Missouri, and Settling Defendant (individually “Party”).

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

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

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

“Settling Defendant” shall mean Delta Asphalt, Inc., a Missouri corporation.

“Site” shall mean Operable Unit 5 of the Madison County Mines Superfund Site, which includes the Catherine Mine, Skaggs Tailings, and Little Saint Francis River Tailings subsites, and which consists of mine waste from the Catherine Mine, Skaggs Tailings Pile, and the Little Saint Francis River Tailings Pile and Mill subsites and all other hazardous substances brought to the Site by EPA as part of its response actions, located in Madison County, Missouri, and generally shown on the map attached as Appendix B.

“State” shall mean the State of Missouri and each department, agency, and instrumentality of the State, including MoDNR.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to implement land use restrictions and to resolve its alleged civil liability with regard to the Site under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), Section 7003 of RCRA, 42 U.S.C. § 6973, and Mo. Rev. Stat. §§ 260.350—260.430 and §§ 260.500—550, as provided in the Covenants by Plaintiffs in Section IX, subject to the Reservations of Rights by the United States and the State in Section X.

VI. PROPERTY REQUIREMENTS

5. **Agreements Regarding Access and Non-Interference.** Settling Defendant shall, with respect to its Affected Property:

a. Provide the United States, potentially responsible parties who have entered or may enter into an agreement with the United States or the State for performance of response action at the Site (hereinafter “Performing Parties”), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Performing any action on or under the Affected Property that EPA, in its discretion, deems necessary or appropriate to effectuate response or remedial actions at the Site;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents;
- (7) Assessing Settling Defendant’s compliance with the Consent Decree;
- (8) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and

(9) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances, or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site. Further, Settling Defendant agrees to the following restrictions (which restrictions are not applicable to actions taken by EPA or MoDNR as part of or to maintain the remedy):

(1) Settling Defendant shall not use the Affected Property for residential purposes, including but not limited to: single family homes, duplexes, mutli-plexes, apartments, condominiums, schools, retirement or senior/child-care facilities, or any land use where persons can be expected to reside.

(2) Settling Defendant shall refrain from, and not permit others to conduct, excavation or disturbance of any soil on the Affected Property without the prior written approval of EPA and MoDNR. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall request permission to do so from EPA and MoDNR at least thirty (30) days before the soil disturbance activities are scheduled to begin.

(a) Except that soil on the Affected Property may be disturbed if necessary in the case of an emergency (such as a water or gas main break, fire, explosion, or natural disaster), in which case the Settling Defendant, or its successors and assigns, shall ensure that notification is provided to EPA and MoDNR no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response must be returned to its original location and depth, or properly characterized, managed, and disposed of in accordance with all applicable local, state, and federal requirements. Within thirty (30) days after such emergency has been abated, Settling Defendant or its successors and assigns shall provide a written report to EPA and MoDNR describing such emergency and any response actions taken; and

(b) In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Affected Property, Settling Defendant, or its successors and assigns, as applicable, shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations.

(3) Settling Defendant shall refrain from, and not permit others to conduct, the following activities which could result in the use of contaminated groundwater: (a) the use of groundwater from the Affected Property for any purpose, except as approved by EPA and MoDNR for the collection of

groundwater samples for environmental analysis purposes, collection or treatment of groundwater for remedial purposes, or collection or treatment of groundwater as part of excavation or construction activities; and (b) drilling or other artificial penetration of any groundwater-bearing units containing contaminants, except as approved by EPA and MoDNR.

(a) Except that groundwater on or under the Affected Property may be disturbed, if necessary, during an emergency (such as a water or gas main break, fire, explosion, or natural disaster), in which case the Settling Defendant, or its successors and assigns, as applicable, shall ensure that notification is provided to EPA and MoDNR no later than 48 hours after the disturbance begins. Any contaminated groundwater disturbed as part of an emergency response must remain in the excavation, or be properly characterized, managed, and disposed of in accordance with all applicable local, state, and federal requirements. Within thirty (30) days after such emergency has been abated, Settling Defendant or its successors and assigns, as applicable, shall provide a written report to EPA describing such emergency and any response actions taken.

6. **Proprietary Controls.** Settling Defendant shall, with respect to Settling Defendant's Affected Property, execute and record, in accordance with the procedures of this ¶ 6, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree, including those activities listed in ¶ 5.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ 5.b (Land, Water, or Other Resource Use Restrictions).

a. **Grantees.** The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that EPA and the State are a "Department" expressly granted the right of access and the right to enforce the covenants allowing EPA and the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Recording of Proprietary Controls**

(1) Settling Defendant shall, within one hundred and eighty (180) days of the Effective Date, secure the immediate recordation of the Proprietary Controls in the form attached hereto as Appendix D in the appropriate land records.

(2) Settling Defendant shall, within thirty (30) days after recording the Proprietary Controls, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls certified copies of the recorded Proprietary Controls showing the clerk's recording stamps.

c. Settling Defendant, as the property owner of the Affected Property, when present onsite, shall monitor all Proprietary Controls, and when not present onsite, shall cooperate with EPA and the State in their monitoring and enforcing all Proprietary Controls

required under this Consent Decree. Settling Defendant shall provide notice to EPA within two (2) business days of becoming aware of anyone using the Affected Property in a manner that might (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances; or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site as outlined in subparagraph 5.b. As long as Settling Defendant complies with this Paragraph, Settling Defendant shall not be determined to have permitted others to conduct the activities described in subparagraph 5.b.

d. Settling Defendant shall not Transfer its Affected Property unless it has executed and recorded all Proprietary Controls regarding the Affected Property in accordance with this Paragraph.

7. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendant would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance, and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If Settling Defendant is unable to accomplish what is required through “best efforts” in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist Settling Defendant, or take independent action, in obtaining such access, and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable.

8. Notice to Successors-in-Title

a. Settling Defendant shall, prior to entering into a contract to Transfer its Affected Property, or sixty (60) days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA performed a response action regarding the Site; and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee; and

(3) Any contract to Transfer the Affected Property must explicitly contain an acknowledgement and acceptance by the proposed transferee of the continuing obligations under the Proprietary Controls, including the granting of rights of access to EPA and the State for implementation, operation, maintenance, monitoring, inspection, or enforcement related to EPA’s response actions on the Affected Property and the associated Proprietary Controls. Upon Transfer of the Affected Property, in accordance with the provisions of this Paragraph, Settling Defendants obligations under the Consent Decree shall terminate.

9. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement

authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Stipulated Penalty

a. If Settling Defendant fails to comply with Section VI (Property Requirements), Settling Defendant shall be in violation of this Consent Decree, and EPA, in its sole discretion, may require Settling Defendant to pay a stipulated penalty to EPA of \$1,000 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within thirty (30) days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
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”

and shall reference the Site/Spill ID Number 07LT and DJ Number 90-11-3-11942.

c. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

Regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

d. Such notice shall reference the Site/Spill ID Number 07LT and DJ Number 90-11-3-11942.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from performance of any other requirements of this Consent Decree.

VIII. DISPUTE RESOLUTION

14. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding 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.

15. A dispute shall be considered to have arisen when one Party sends the other parties a written Notice of Dispute. Any dispute regarding 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 twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

16. Statements of Position

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) 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 Settling Defendant's position as to whether formal dispute resolution should proceed under ¶¶ 17 (Record Review) or 18.

b. Within twenty (20) days after receipt of Settling Defendant's Statement of Position, EPA will 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 EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶¶ 17 (Record Review) or 18. Within ten (10) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under ¶¶ 17 (Record Review) or 18, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if 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 ¶¶ 17 (Record Review) or 18.

17. **Record Review.** Formal dispute resolution for disputes pertaining to all 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.

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

b. The Director of the Superfund and Emergency Management Division, EPA Region 7, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶17.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to ¶¶ 17.c and 18.a.

c. Any administrative decision made by EPA pursuant to ¶ 17.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 all Parties within ten (10) days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States 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 Superfund and Emergency Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 17.a.

18. Formal dispute resolution for disputes that are not accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund and Emergency Management Division, EPA Region 7, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 16. The decision of the Director of the Superfund and Emergency Management Division shall be binding on Settling Defendant unless, within ten (10) days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

19. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. 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 VII (Failure to Comply With Consent Decree).

IX. COVENANTS BY PLAINTIFFS

20. **Covenants for Settling Defendant by United States.** Except as specifically provided in Section X (Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

21. **Covenants for Settling Defendant by State.** Except as specifically provided in Section X (Reservation of Rights), the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 107(a) of CERCLA, 42 U.S.C. §§ 9607(a), and Mo. Rev. Stat. §§ 260.350—260.430 and §§ 260.500—550, with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

X. RESERVATION OF RIGHTS

22. The United States and State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Paragraph 20 (Covenants for Settling Defendant by United States) and Paragraph 21 (Covenants for Settling Defendant by State). Notwithstanding any other provision of this Consent Decree, the United States and State reserve all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability resulting from exacerbation of Existing Contamination by Settling Defendant, its corporate successors, assigns, lessees, or sublessees;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste, after signature of this Consent Decree by Settling Defendant and not within the definition of Existing Contamination; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

XI. COVENANTS BY SETTLING DEFENDANT

23. **Covenants by Settling Defendant.** Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

24. Except as provided in Paragraph 26 (claims against other potentially responsible parties) and Paragraph 31 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section X (Reservation of Rights by United States), other than in Paragraph 22.a (liability for failure to meet a requirement of the Consent Decree) or 22.b (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

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

26. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

27. Except as provided in Paragraph 26 (claims against other potentially responsible parties), 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. Except as provided in Section XI (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2)-(3) of

CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

28. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States exercises rights under the reservations in Section X (Reservation of Rights by United States), other than in Paragraph 22.a (liability for failure to meet a requirement of the Consent Decree) or 22.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

29. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

30. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOJ, and the State in writing within ten (10) days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA, DOJ, and the State within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

31. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other 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 or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section IX.

XIII. CERTIFICATION

32. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has fully complied with any and all EPA and State requests for information

regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescasemanagement.enrd@usdoj.gov

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11942

and: Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11942

As to EPA: Kate Reitz
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
reitz.katherine@epa.gov

and: Kurt Limesand
Remedial Project Manager
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
limesand.kurt@epa.gov

As to the State: State Project Manager
Missouri Department of Natural Resources
Environmental Remediation Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

As to Settling Defendant: Anthony L. Martino, II
Secretary
Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703
AMartino@colasinc.com

and: Peter Strassner, Esq.
Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167
pstrassner@thompsoncoburn.com

XV. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

35. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this 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. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is the legal description of the Affected Property; “Appendix B” is the map of the Site; “Appendix C” is a map of the Madison County Mines Superfund Site, of which Operable Unit 5, the Site, is a part; and “Appendix D” is the Proprietary Controls.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of at least thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

37. If for any reason this 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.

XVIII. SIGNATORIES/SERVICE

38. Each undersigned representative of Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his/her designee, and the Director of the Missouri Department of Natural Resources certifies that she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind

legally such Party to this document. Electronic and digital signatures will be accepted as if original.

39. Settling Defendant 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.

40. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant 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.

XIX. FINAL JUDGMENT

41. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 202__.

United States District Judge

Signature Page for Consent Decree Regarding
Operable Unit 5 of the Madison County Mines Superfund Site

FOR THE UNITED STATES OF AMERICA:

JEAN E. WILLIAMS
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

2/19/21

Dated



Rachel Hankey
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

**JAMES
GULLIFORD**

Digitally signed by JAMES
GULLIFORD
Date: 2020.12.21
15:54:54 -06'00'

James Gulliford
Regional Administrator, Region 7
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, KS 66219

KATHERINE REITZ

Digitally signed by KATHERINE
REITZ
Date: 2020.12.16 14:38:48 -07'00'

Katherine Reitz
Assistant Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, KS 66219

Signature Page for Consent Decree Regarding
Operable Unit 5 of the Madison County Mines Superfund Site

FOR THE STATE OF MISSOURI:

Dated

Timothy P. Duggan Digitally signed by Timothy P. Duggan
Date: 2020.12.10 16:46:25 -06'00'

[Name and address for Missouri AGO]

Dated

 Digitally signed
by Carol S. Comer
Date: 2020.12.03
12:12:41 -06'00'

Carol S. Comer, Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Signature Page for Consent Decree Regarding
Operable Unit 5 of the Madison County Mines Superfund Site

FOR DELTA ASPHALT, INC.:

12/2/2020
Dated



Zach Green
President
Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703

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

Name: Anthony L. Martino, II
Title: Secretary
Address: Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703

APPENDIX A

LEGAL DESCRIPTION OF AFFECTED PROPERTY

A PART OF LOT 5 OF THE NORTHEAST QUARTER AND A PART OF LOT 6 OF THE NORTHEAST QUARTER, FRACTIONAL SECTION 2, TOWNSHIP 33 NORTH, RANGE 6 EAST OF THE FIFTH PRINCIPAL MERIDIAN, COUNTY OF MADISON, STATE OF MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at a 3" x 6" stone (found) at the southwest corner of Lot 4 of the northeast quarter, Section 2; Thence N 00° 33' 05" E, 1,641.77 feet along the west line of Lot 4 of the northeast quarter and the west line of Lot 5 of the northeast quarter to a 4" x 4" stone (found) at the southwest corner of a tract of land recorded in Book No. 182 at Page No. 231 of the land records of the County Recorder's Office; Thence N 83° 15' 21" E, 1,474.67 feet along the south line of said tract and the south line of a tract of land recorded in Book No. 161 at Page No. 241 to a 6" x 7" stone (found); Thence N 04° 28' 07" E, 179.76 feet along the east line of said tract recorded in Book 161 at Page 241 to a 1/2" iron pin (set) and being the TRUE POINT OF BEGINNING:

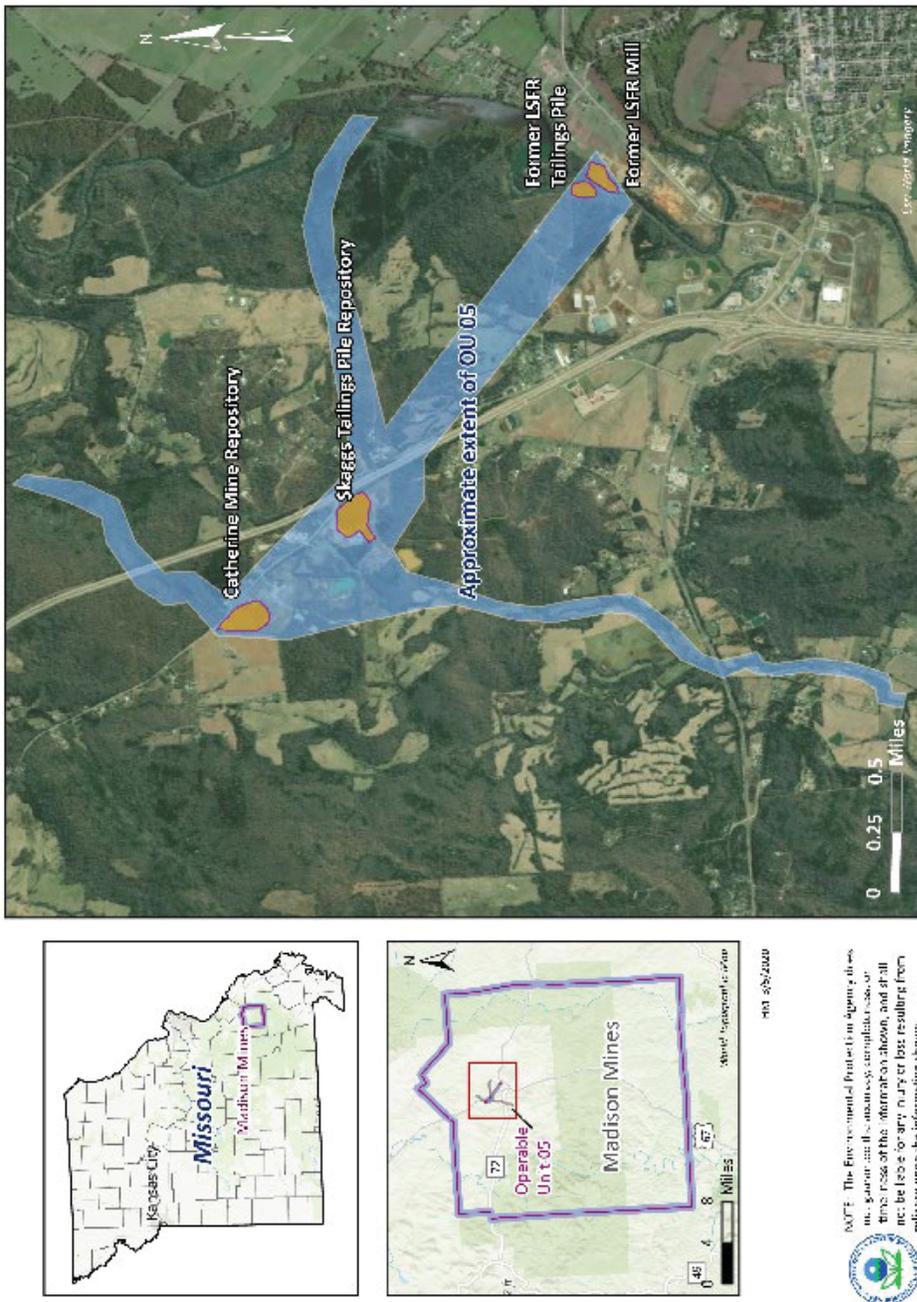
Thence continuing along the east line of said tract recorded in Book 161 at Page 241 the following courses and distances:

N 04° 28' 07" E, 1,004.24 feet to a 1/2" iron pin (set); Thence N 18° 20' 05" W, 119.03 feet to a 5" x 5" concrete post (found); Thence N 71° 39' 11" E, 123.92 feet to a "U" post (found) on the southwesterly right of way line of Missouri State Route "H" and at the beginning of a non-tangent curve concave to the northeast, having a radius of 1,633.92 feet, a central angle of 09° 47' 41" and from which a radial line bears, N 53° 22' 11" E; Thence in a southeasterly direction along said curve and right of way line 279.32 feet to a 1/2" iron pin (set); Thence continuing along said right of way line the following courses and distances:

S 46° 25' 30" E, 329.58 feet to a 1/2" iron pin (set) at the beginning of a curve, concave to the southwest, having a radius of 20,954.22 feet and a central angle of 01° 22' 41"; Thence in a southeasterly direction along said curve and right of way line, 503.96 feet to a 1/2" iron pin (set); Thence leaving said right of way line, S 68° 49' 12" W, 1,011.37 feet to the point of beginning, containing 12.57 acres, more or less.

**APPENDIX B
MAP OF THE SITE**

Appendix B. Approximate Extent of Madison County Mines Superfund Site Operable Unit 05

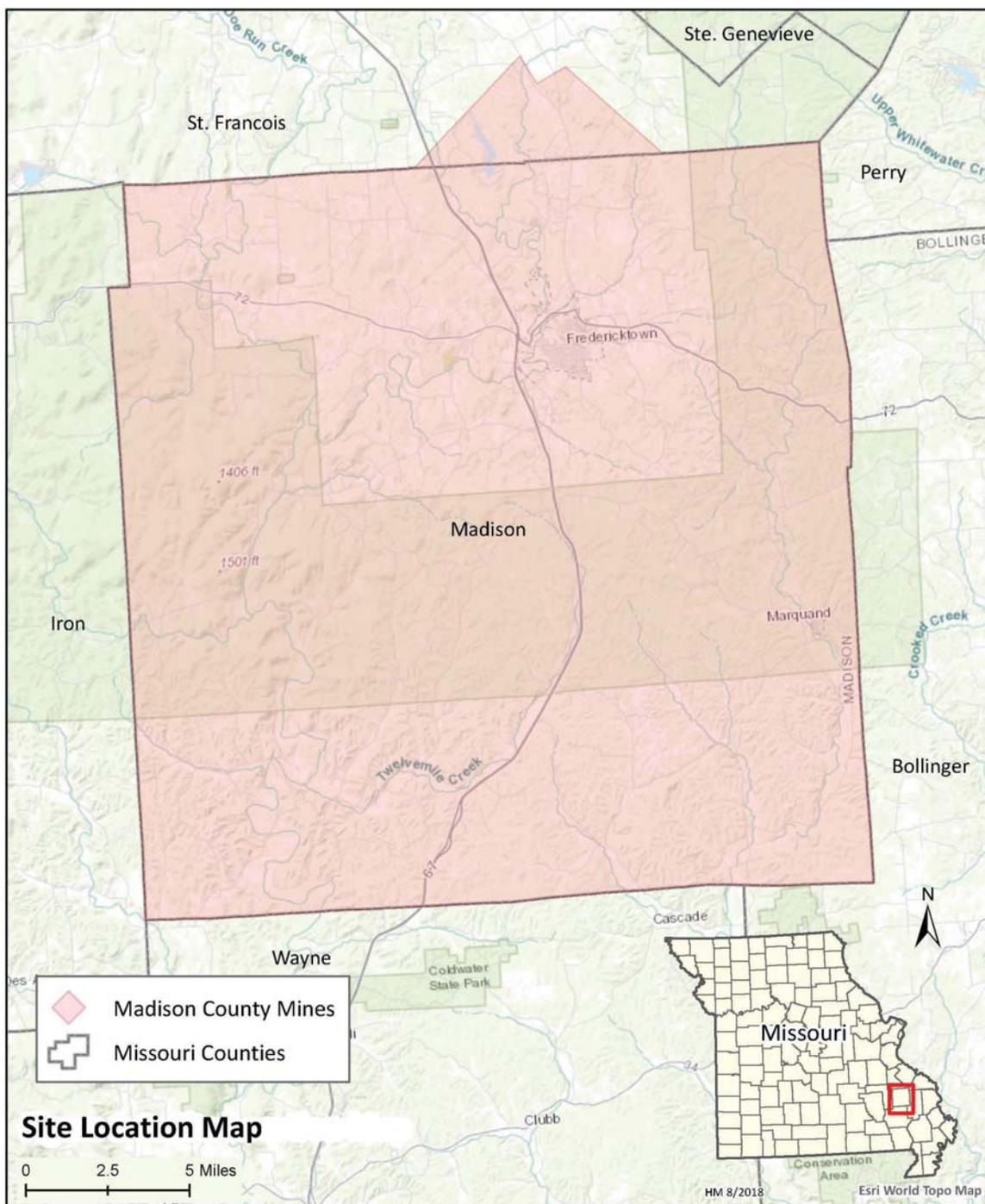


Approximate location of OUS outlined in blue.

 NOTE: The Environmental Projects in Operation does not warrant the accuracy, completeness, or timeliness of the information shown, and shall not be held liable for any injury or loss resulting from reliance upon the information shown.

APPENDIX C

MAP OF THE MADISON COUNTY MINES SUPERFUND SITE



The Agency is providing this geospatial information as a public service and does not vouch for the accuracy, completeness, or currency of data. Data provided by external parties is not independently verified by EPA. This data is made available to the public strictly for informational purposes. Data does not represent EPA's official position, viewpoint, or opinion, express or implied. This information is not intended for use in establishing liability or calculating Cost Recovery Statutes of Limitations and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States or third parties. EPA reserves the right to change these data at any time without public notice.

APPENDIX D

PROPRIETARY CONTROLS

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(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant

Document Date: _____

Grantor: Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703

Grantee: Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703

Departments: Missouri Department of Natural Resources
P.O. Box 176, 1101 Riverside Drive
Jefferson City, Missouri 65102

United States Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Legal Description: See Exhibit A

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ENVIRONMENTAL COVENANT

This Environmental Covenant (“Covenant”) is entered into by and between the Grantor, Delta Asphalt, Inc., a Missouri corporation (“Owner”), the Grantee, Delta Asphalt, Inc., a Missouri corporation (“Holder”), the Missouri Department of Natural Resources (“MoDNR”), and the United States Environmental Protection Agency (“EPA”) (together, MoDNR and EPA shall be referred to as the “Departments,” or may be referred to generically as a “Department” when a provision could apply to either) pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RSMo. Owner, Holder, and the Departments may collectively be referred to as the “Parties” herein.

RECITALS

WHEREAS, Owner is the owner in fee simple of certain real property (“the Property”) located in Madison County, Missouri and more particularly described in Exhibit A and as shown on the map attached hereto as Exhibit B, and located within the Catherine Mines Subsite of Operable Unit 5 (“OU5”) of the Madison County Mines Superfund Site;

WHEREAS, Owner desires to grant to the Holder this Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Missouri Environmental Covenants Act;

WHEREAS, MoDNR and EPA each enter into this Covenant as a “Department” pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039 RSMo, with all the attendant rights of a “Department” under such Act, which include, but are not limited to, having a right to access the Property and enforce this Covenant without acquiring an interest in the Property;

WHEREAS, Holder enters into this Covenant as a “Holder” pursuant to the Missouri Environmental Covenants Act, with all the attendant rights of a “Holder” under such Act, which include, but are not limited to, acquiring an interest in the Property and a right to enforce this Covenant;

WHEREAS, EPA performed an investigation and “environmental response project” (as defined in the Missouri Environmental Covenants Act) on the Property pursuant to a Record of Decision (“ROD”) issued by EPA on September 27, 2012, for the remediation of OU5 of the Madison County Mines Superfund Site, pursuant to the Comprehensive Environmental, Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 - 9675. The ROD calls for EPA to establish environmental covenants pursuant to MoECA through agreements with property owners as institutional controls to prevent activities that could result in exposure of mine waste to receptors, well drilling in the capped locations, and ground water consumption. The Owner has agreed to file this Environmental Covenant for the Property with the appropriate recorder of

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deeds because contaminants of concern will remain at the Property above levels that allow for unrestricted land use;

WHEREAS, lead mining and processing occurred at the Catherine Mine subsite beginning around 1900 and ended at some point before 1971.

WHEREAS, Owner operated a hot asphalt plant on the Property and adjoining property beginning in 1978 and purchased the property in 1988. At some point prior to 1995, Owner ceased using the property and has not used it since that time.

WHEREAS, in or about September of 2002, EPA and Owner entered into an agreement allowing EPA to use the Property as a repository for lead-contaminated soil from residential and recreational areas of nearby Fredericktown. EPA estimates that the use of Owner's property in lieu of transporting and disposing of this contaminated soil at the nearest available landfill permitted to accept such waste for disposal has saved the United States a significant amount of money in response costs at the Madison County Mines Superfund Site.

WHEREAS, the environmental response project conducted at the Property includes the following relevant activities:

Investigative History

In 1995, EPA performed an Expanded Site Investigation of the Little Saint Francis River watershed in Madison County, Missouri. Studies conducted by MoDNR and the Madison County Health Department concluded that some children in Madison County, where the Property is located, had elevated blood lead levels. Beginning in 2000, EPA performed removal actions to remove lead-contaminated soil from public facilities and residences in Madison County. By October 2006, EPA had remediated over 800 residential and public properties, and had transported approximately 205,000 cubic yards of lead-contaminated soil to a repository partially located on the Property. The Property is located in OU5 of the Madison County Mines Superfund Site. EPA completed the Remedial Investigation for OU5 in September 2008, completed the Feasibility Study in June 2012, and finalized the ROD in September 2012. These documents are contained in the Administrative Record for OU5 which can be found at the EPA's Region 7 Office in Lenexa, Kansas and at the Fredericktown Branch of the Ozark Regional Library.

Description of contamination, type, location, extent, and contaminants of concern ("COCs")

The mine waste at the Property, including mine waste brought onto and consolidated at the Property by EPA, contains elevated levels of lead and other heavy metals which pose a threat to human health and the environment. These deposits, acting as a source, have contaminated soil, sediments, surface water and groundwater. Samples were taken from the tailings piles and soils beneath the tailings piles during the RI and

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analyzed for COCs. While lead is the primary COC, results from the tailings samples showed elevated levels of numerous metals including arsenic, cadmium, cobalt, copper, iron, nickel, and zinc. Results from soil samples showed elevated levels of numerous metals including lead, arsenic, cobalt, copper, iron, nickel, vanadium, and zinc. Sediment samples indicated the presence of various metals at concentrations above background, and copper, lead and nickel exceeded ecological risk goals. Samples of groundwater within the tailings pile contained concentrations of lead and arsenic above federal drinking water standards. The EPA believes, however, that the groundwater contamination is limited, for the most part, to the tailings locations. More detail is contained in the human health and ecological risk assessments for OU5 maintained in the site file at EPA's Region 7 Office in Lenexa, Kansas and the Administrative Record housed in both the Region 7 and the Fredericktown Branch of the Ozark Regional Library.

The remedial action undertaken at the Property consists of excavation and consolidation of tailings, soil, and sediment from the flood plains, overbank deposits, creek, the small pond to the south, and other affected downstream locations. Source locations and a repository have been graded and contoured. Excavated areas have been backfilled with clean soil and a low permeability cap with a vegetative cover has been constructed over the mine waste repository. Routine inspection and long-term maintenance of the final capped repository will be the responsibility of, and performed by, the Departments.

WHEREAS, upon completion of the environmental response project described above, COCs, including, but not limited to, arsenic, cobalt, copper, lead, manganese, and nickel will remain at the Property above levels that allow for the unrestricted use of the Property;

WHEREAS, the environmental response project described above is deemed protective if, and only if, the activity and use limitations described in this Covenant remain in place for as long as the contaminants of concern remain at the Property above levels that allow for the unrestricted use of the Property;

WHEREAS, the Parties entered into a Consent Decree between the United States, the State of Missouri (Plaintiffs) and Owner, signed _____, Civil Action No. _____ ("Consent Decree"), which requires the Owner to file an Environmental Covenant for the Property with the appropriate recorder of deeds because contaminants of concern remain at the site above levels that allow for unrestricted land use;

WHEREAS, for purposes of the environmental response project described above, and for purposes of responding to any requests or acting on any submittals made under this Covenant, EPA shall be the "Lead Agency" and MoDNR shall be the "Support Agency" as specified below. The Departments intend that the Lead Agency will provide reasonable opportunities for

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consultation with the Support Agency as described below, and that the Support Agency will provide input, if any, to the Lead Agency within reasonable timeframes and as appropriate under the circumstances. If MoDNR and EPA subsequently agree to change such roles, then the Lead Agency shall so notify the current Owner/Transferee and the Holder, with a copy to the Support Agency.

WHEREAS, routine inspection and maintenance of the engineered controls will be the responsibility of and will be performed by MoDNR.

NOW THEREFORE, Owner, Holder, and the Departments agree to the following:

1. Parties.

The Owner, Holder, and the Departments are parties to this Covenant, and may enforce it as provided in Section 260.1030, RSMo.

2. Activity and Use Limitations.

Owner hereby subjects the Property to, and agrees to comply with, the following activity and use limitations (which restrictions are not applicable to actions taken by EPA or MoDNR as part of or to maintain the remedy):

A. No Residential Land Use:

Based on reports on file at EPA's offices in Lenexa, Kansas, and MoDNR's offices in Jefferson City, Missouri, the Property currently does not meet the Departments' standards for residential use. Therefore, COCs remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place.

The Property shall **not** be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, retirement or senior/child-care facilities, or any land use where persons can be expected to reside.

B. No Disturbance of Soil:

Based on reports on file at the EPA's offices in Lenexa, Kansas, and MoDNR's offices in Jefferson City, Missouri, COCs remaining at the Property exceed the Departments' standards for non-residential use, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the Property so long as the soil is not disturbed such that exposure may result.

Therefore, soil on the Property shall not be excavated or otherwise disturbed in any manner:

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- 1) Without the prior written approval of the Lead Agency. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall request permission to do so from the Departments at least thirty (30) days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) may deny the request to disturb the soil or may require specific protective or remedial actions before allowing such soil disturbance activities to occur.
- 2) Contaminated soil may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion, or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the Departments and Holder verbally or in writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed, and disposed of, in accordance with all applicable local, state, and federal requirements. Within thirty (30) days after such emergency has been abated, the Owner/Transferee shall provide a written report to the Departments describing such emergency and any response actions.

C. Construction Worker Notice:

Based on reports on file at the EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, COCs remaining at the Property may exceed the Departments' standards for construction worker exposure, but do not pose a significant current or future risk to human health or the environment with respect to construction workers so long as the soil is not disturbed such that exposure may result.

In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Property, Owner/Transferee shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant to any individuals conducting or otherwise responsible for the work. Owner/Transferee shall maintain copies of any such written notice for a period of at least three (3) years, and shall provide copies of such records to the Departments and/or Holder upon request.

D. Engineered Controls for Soil:

Based on reports on file at EPA's offices in Lenexa, Kansas, and MoDNR's offices in Jefferson City, Missouri, COCs remaining in the soil at the Property do not pose a significant current or future risk to human health or the environment so long as the

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engineered controls described below are maintained so as to prevent exposure, release, or migration of contaminants from the soil.

Therefore, the following engineered controls must remain in place and remain effective in accordance with the Consent Decree, which has been approved by the Departments, unless and until the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) provides written approval for any modifications:

- 1) Low-permeable cap, consisting of a one-foot clay layer and a six-inch vegetative soil layer seeded with native species covering the consolidated mine waste on the Property; and
- 2) Constructed stormwater channel and stormwater basin on the Property.

E. No Drilling or Use of Groundwater:

Based on reports on file at EPA's offices in Lenexa, Kansas, and the MoDNR's offices in Jefferson City, Missouri, COCs remain in groundwater in one or more zones beneath the Property at levels exceeding the Departments' standards for one or more specific groundwater uses.

Therefore, in addition to any applicable state or local well use, the following restrictions shall apply to the Property:

- 1) Groundwater from the Property shall not be consumed or otherwise used for any purpose, except as approved by the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) for the collection of groundwater samples for environmental analysis purposes, collection or treatment of groundwater for remedial purposes, or collection or treatment of groundwater as part of excavation or construction activities.
- 2) There shall be no drilling or other artificial penetration of any groundwater-bearing unit(s) containing contaminants, unless performed in accordance with a work plan approved by the Lead Agency (after a reasonable opportunity for consultation with the Support Agency); and
- 3) Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring, and/or remediation purposes installed in accordance with a work plan approved by the Lead Agency (after a reasonable opportunity for consultation with the Support Agency).

Groundwater may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion, or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the Departments and Holder verbally or in

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writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated groundwater disturbed as part of an emergency response action must remain in the excavation, or be properly characterized, managed, and disposed of, in accordance with all applicable local, state, and federal requirements. Within thirty (30) days after such emergency has been abated, the Owner/Transferee shall provide a written report to the Departments describing such emergency and any response actions.

If any person desires in the future to use the Property for any purpose or in any manner that is prohibited by this Covenant, the Departments and the Holder must be notified in advance so that a Modification, Temporary Deviation, or Termination request can be considered as described below. Further analyses and/or response actions may be required prior to any such use.

3. Running with the Land.

This Covenant shall be binding upon Owner and Owner's heirs, successors, assigns, and other transferees in interest (collectively referred to as "Transferees"), and shall run with the land, as provided in Section 260.1012, RSMo, subject to amendment or termination as set forth herein. The term "Transferee(s)," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees (subject to applicable lender liability protections prescribed by law), easement holders, and/or lessees.

4. Location of Files and Records.

Records of this environmental response project for the Property are currently located in EPA's Region 7 Office at 11201 Renner Boulevard, Lenexa, Kansas and in MoDNR's offices in Jefferson City, Missouri. Information regarding the environmental response project may be obtained from the Departments by making a request to EPA pursuant to the United States Freedom of Information Act, 5 U.S.C. § 552, and/or to MoDNR pursuant to the Missouri "Sunshine Law", Chapter 610, RSMo, by referencing the site identification name of Madison County Mines Superfund Site, Catherine Mines Subsite, Operable Unit 5 – with the CERCLIS ID# MOD098633415.

5. Enforcement.

Compliance with this Covenant may be enforced as provided in Section 260.1030, RSMo. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority or rights under any other applicable law.

In addition to or in lieu of any other remedy authorized by law, prior to taking legal action to enforce this Covenant, a Department may require

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Owner/Transferee to submit a plan to investigate and/or correct any alleged violation of this Covenant, in which case such Department shall provide written notification to the other Department and the Holder. If such Owner/Transferee fails to act within the required timeframe or if a Department finds a proposed remedy unacceptable, that Department may pursue any remedy authorized by law. In such event, such Department shall provide written notification to the other Department and the Holder, prior to or contemporaneously with any legal action taken to enforce this Covenant. Notwithstanding the foregoing, no enforcement action will be taken against, and no corrective action plan shall be required of Delta Asphalt, Inc. (Delta), unless Delta itself violates or permits the violation of the Covenant. In determining whether Delta has permitted a violation of the Covenant, Departments shall follow sub-paragraph 6.c. of the Consent Decree between the Departments and Delta, attached to this Covenant as Exhibit C.

6. Right of Access.

Owner, on behalf of itself and any Transferees, hereby grants to the Holder and the Departments and their respectively authorized agents, contractors, and employees, the right to access the Property at all reasonable times for implementation, monitoring, inspection, or enforcement of this Covenant and the related environmental response project. Nothing herein shall be deemed to limit or otherwise impede a Department's rights of access and entry under federal or state law or other agreement.

7. Compliance Reporting.

Upon the written request of MoDNR or EPA, Owner/Transferee shall submit to the Departments, by no later than January 31st of each year, written documentation verifying that the activity and use limitations imposed hereby were in place and complied with by Owner/Transferee during the preceding calendar year. Any such request made by the Departments shall not relieve the Owner or Transferee of the obligation to report noncompliance (addressed below). The written documentation shall include the following statement, signed by Owner/Transferee:

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

In the event that an Owner, Transferee, or Holder becomes aware of any noncompliance with the activity and use limitations described in Section 2 above, such person or entity shall notify all other Parties to this Covenant in writing as soon as possible, but no later than ten (10) business days thereafter.

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8. Additional Rights.

None specified.

9. Notice upon Conveyance.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20____, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF _____ COUNTY, _____, ON _____, 20____, AS DOCUMENT _____, BOOK____, PAGE _____.

Owner/Transferee shall notify Holder and the Departments within ten (10) days following each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

10. Representations and Warranties.

Owner hereby represents and warrants to Holder and the Departments that:

- a) Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;
- b) This Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected; and
- c) Owner is the sole owner of the Property and holds fee simple title, which is free, clear, and has no encumbrances known to the Parties other than an electric utility easement. The Black River Electric Cooperative ("Black River"), a Missouri Rural Electric Cooperative and corporation existing pursuant to Chapter 394 RSMo, obtained its interests from a Grant of Electric Utility Easement to Missouri Electric Power Company dated January 15, 1927, filed in Book 53, page 185, and recorded with the Madison County Recorder of Deeds. Black River is the successor in interest to the Missouri Electric Power Company. EPA has notified Black River regarding the capped repository of lead-contaminated soil on the Property, this environmental covenant, and Black River's potential liability were it to take any actions on the Property that cause a release of a hazardous substance.

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11. Amendments, Termination, and Temporary Deviations.

This Covenant may be amended or terminated by approval of the Departments, Holder, and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to Section 260.1027 RSMo. Any other Parties to this Covenant hereby waive the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by the Lead Agency in lieu of a permanent amendment to this Covenant. Owner/Transferee may submit a written request to the Departments to temporarily deviate from specified requirements described herein for a specific purpose and timeframe, which shall not exceed ninety (90) days. Any such request shall be transmitted to the Holder and the Departments as described below. The request must specifically invoke this paragraph of this Covenant, fully explain the basis for such temporary deviation, and demonstrate that protection of human health and the environment will be maintained. After a reasonable opportunity for consultation with the Support Agency, the Lead Agency will evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

12. Severability.

If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law.

This Covenant shall be governed by and interpreted in accordance with the laws of the State of Missouri.

14. Recordation.

Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Owner shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner shall be responsible for any costs associated with recording this Covenant.

15. Effective Date.

The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of the county in which the Property is situated.

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16. Distribution of Covenant.

Within thirty (30) days following the recording of this Covenant, or any amendment or termination of this Covenant, Owner/Transferee shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the Covenant as recorded with the appropriate recorder of deeds (including book and page numbers) to: (a) each of the Parties hereto; (b) each person holding a recorded interest in the Property, including any mortgagees or easement holders; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated herein.

17. Contact Information.

Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Owner/Transferee:

Anthony L. Martino, II
Secretary
Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703

and:

Peter Strassner, Esq.
Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167

If to Holder:

Anthony L. Martino, II
Secretary
Delta Asphalt, Inc.
114 S. Silver Springs Road
Cape Girardeau, Missouri 63703

and:

Peter Strassner, Esq.
Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167

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If to MoDNR:

Project Manager – Madison County Mines Superfund Site, OU5
Superfund Section, Environmental Remediation Program
P.O. Box 176
Jefferson City, MO 65102-0176

If to EPA:

Project Manager – Kurt Limesand, or his successor
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.
Lenexa, KS 66219

Owner/Transferee, Holder, or the Departments may change their designated recipient of such notices by providing written notice of the same to each other. If any notice or other submittal under this Covenant is received by a former Owner/Transferee who no longer has an interest in the Property, then such former Owner/Transferee shall notify the Departments, the Holder, and the current Owner/Transferee of the Property regarding the mis-directed communication.

18. Reservation of Rights.

This Covenant is a necessary component of the environmental response project described above. Nothing in this Covenant shall be construed so as to relieve any Owner/Transferee from the obligation to comply with this Covenant, or the obligation to comply with any other source of law. This Covenant is not a permit, nor does it modify any permit, order, agreement, decree, or judgment issued under any federal, state, or local laws or regulations, and the Departments do not warrant or aver in any manner that an Owner/Transferee's compliance with this Covenant will constitute compliance with any such requirements. The Departments reserve all legal and equitable remedies available to enforce this Covenant or any other legal requirement. Nothing herein shall be construed so as to prevent a Department or Holder from taking any independent actions as allowed by law.

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The undersigned represent and certify that they are authorized to sign this Covenant on behalf of their respective Parties.

IT IS SO AGREED:

FOR OWNER:

By: _____ Date: _____

Name (print): _____

Title: _____

Address: _____

STATE OF _____)

)

COUNTY OF _____)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared _____(Name), _____(Title) of _____(Corporate Name), known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

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FOR HOLDER:

By: _____

Date: _____

Name (print): _____

Title: _____

Address: _____

STATE OF _____)

)

COUNTY OF _____)

)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared _____(Name), _____(Title) of _____(Corporate Name), known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

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FOR MoDNR

By: _____ Date: _____

John D. Jurgensmeyer, Director
Environmental Remediation Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

STATE OF MISSOURI)

)

COUNTY OF _____)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared John Jurgensmeyer, Director of the Environmental Remediation Program of the Missouri Department of Natural Resources, a state agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Director and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public

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FOR EPA

By: _____ Date: _____

Mary P. Peterson
Director, Superfund & Emergency Management Division
11201 Renner Boulevard
Lenexa, Kansas 66219

STATE OF _____)

)

COUNTY OF _____)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared Mary P. Peterson, Director of the Superfund & Emergency Management Division of the of the U.S. Environmental Protection Agency, Region 7, a federal agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Administrator and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public

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EXHIBIT A – LEGAL DESCRIPTION

A PART OF LOT 5 OF THE NORTHEAST QUARTER AND A PART OF LOT 6 OF THE NORTHEAST QUARTER, FRACTIONAL SECTION 2, TOWNSHIP 33 NORTH, RANGE 6 EAST OF THE FIFTH PRINCIPAL MERIDIAN, COUNTY OF MADISON, STATE OF MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at a 3” x 6” stone (found) at the southwest corner of Lot 4 of the northeast quarter, Section 2; Thence N 00° 33’ 05” E, 1,641.77 feet along the west line of Lot 4 of the northeast quarter and the west line of Lot 5 of the northeast quarter to a 4” x 4” stone (found) at the southwest corner of a tract of land recorded in Book No. 182 at Page No. 231 of the land records of the County Recorder’s Office; Thence N 83 ° 15’ 21” E, 1,474.67 feet along the south line of said tract and the south line of a tract of land recorded in Book No. 161 at Page No. 241 to a 6” x 7” stone (found); Thence N 04° 28’ 07” E, 179.76 feet along the east line of said tract recorded in Book 161 at Page 241 to a 1/2” iron pin (set) and being the TRUE POINT OF BEGINNING:

Thence continuing along the east line of said tract recorded in Book 161 at Page 241 the following courses and distances:

N 04° 28’ 07” E, 1,004.24 feet to a 1/2” iron pin (set); Thence N 18° 20’ 05” W, 119.03 feet to a 5” x 5” concrete post (found); Thence N 71° 39’ 11” E, 123.92 feet to a “U” post (found) on the southwesterly right of way line of Missouri State Route “H” and at the beginning of a non-tangent curve concave to the northeast, having a radius of 1,633.92 feet, a central angle of 09° 47’ 41” and from which a radial line bears, N 53° 22’ 11” E; Thence in a southeasterly direction along said curve and right of way line 279.32 feet to a 1/2” iron pin (set); Thence continuing along said right of way line the following courses and distances:

S 46° 25’ 30” E, 329.58 feet to a 1/2” iron pin (set) at the beginning of a curve, concave to the southwest, having a radius of 20,954.22 feet and a central angle of 01° 22’ 41””; Thence in a southeasterly direction along said curve and right of way line, 503.96 feet to a 1/2” iron pin (set); Thence leaving said right of way line, S 68° 49’ 12” W, 1,011.37 feet to the point of beginning, containing 12.57 acres, more or less.

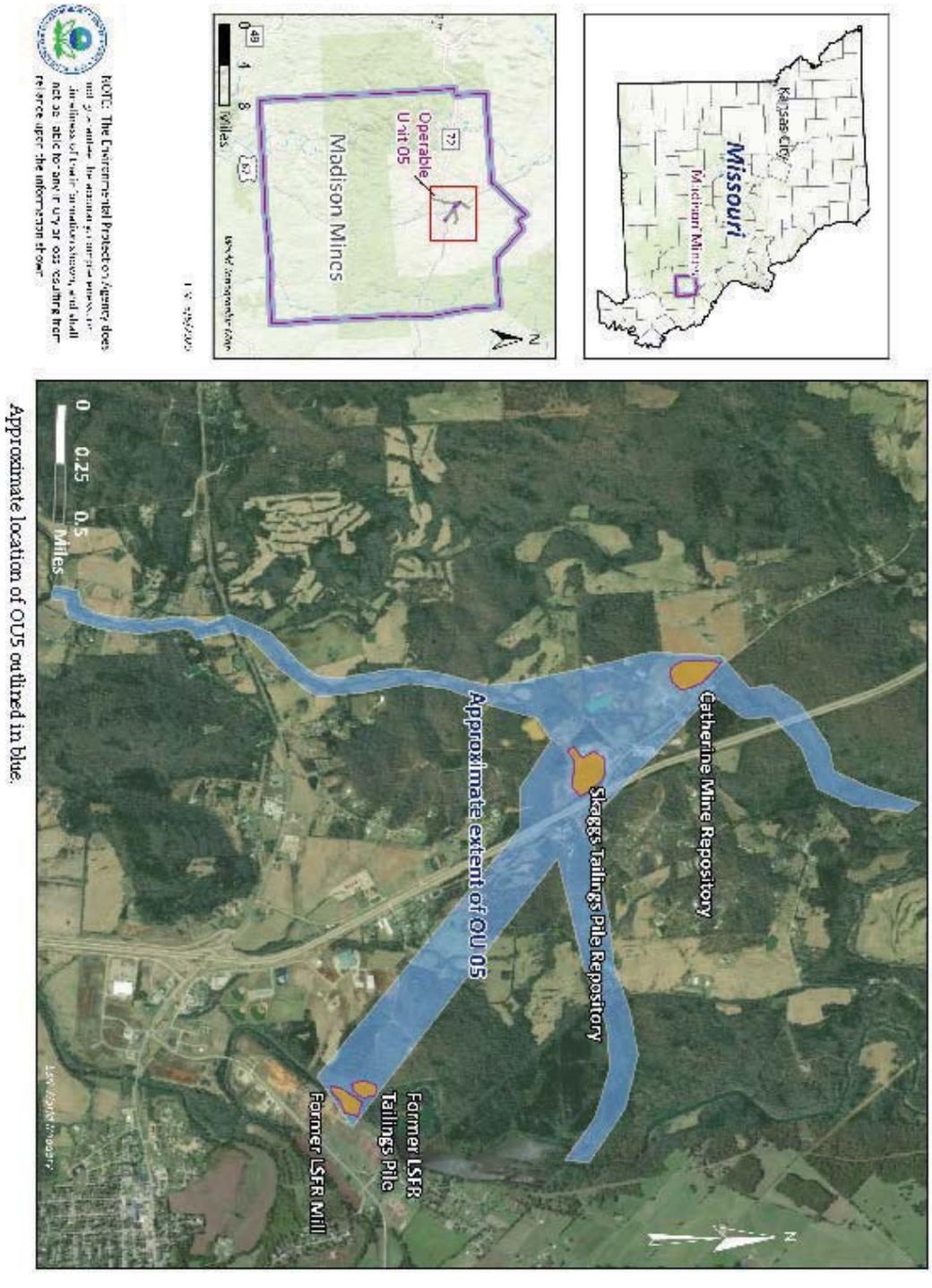
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EXHIBIT B – MAP

Fig. 1 – Map of OU5 of the Madison County Mines Superfund Site

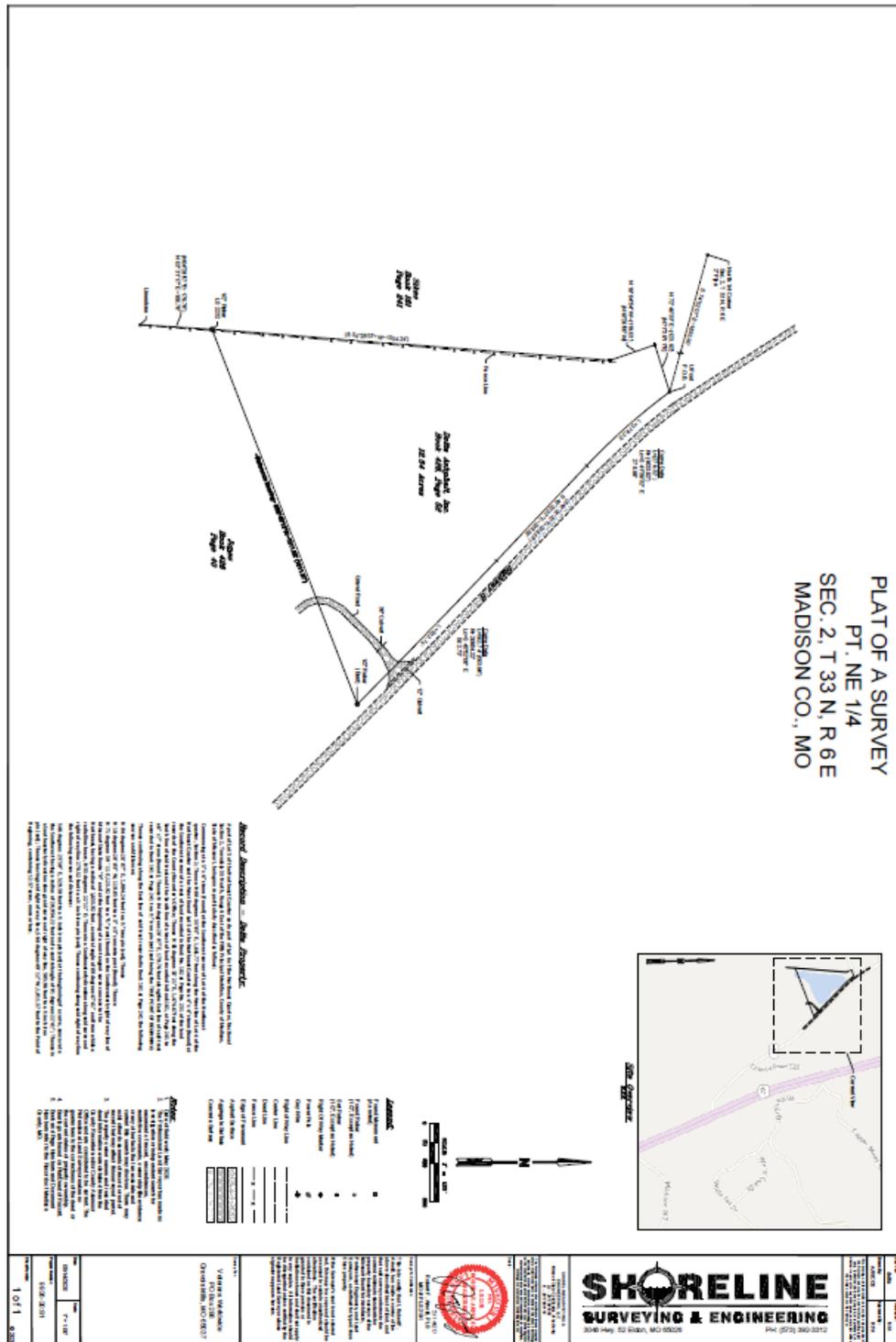


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Fig. 2- Property Description



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EXHIBIT C – CONSENT DECREE

Consent Decree between Delta Asphalt, Inc., United States of America, and the State of Missouri for Operable Unit 5 of the Madison County Mines Superfund Site