

TABLE OF CONTENTS

I.	BACKGROUND.....	3
II.	JURISDICTION.....	4
III.	PARTIES BOUND.....	5
IV.	DEFINITIONS.....	5
V.	GENERAL PROVISIONS.....	9
VI.	PERFORMANCE OF WORK BY SETTLING DEFENDANT.....	10
VII.	REMEDY REVIEW.....	15
VIII.	PROPERTY REQUIREMENTS.....	15
IX.	FINANCIAL ASSURANCE.....	20
X.	PAYMENT OF FUTURE RESPONSE COSTS.....	24
XI.	INDEMNIFICATION AND INSURANCE.....	26
XII.	FORCE MAJEURE.....	27
XIII.	DISPUTE RESOLUTION.....	28
XIV.	STIPULATED PENALTIES.....	30
XV.	COVENANTS BY PLAINTIFF.....	33
XVI.	COVENANTS BY SETTLING DEFENDANT.....	35
XVII.	EFFECT OF SETTLEMENT; CONTRIBUTION.....	35
XVIII.	ACCESS TO INFORMATION.....	38
XIX.	RETENTION OF RECORDS.....	40
XX.	NOTICES AND SUBMISSIONS.....	40
XXI.	RETENTION OF JURISDICTION.....	42
XXII.	APPENDICES.....	42
XXIII.	MODIFICATION.....	42
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT.....	43
XXV.	SIGNATORIES/SERVICE.....	43
XXVI.	FINAL JUDGMENT.....	43

I. BACKGROUND

- A. The United States of America (United States) 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.
- B. In its complaint, the United States seeks, *inter alia*: (1) reimbursement of costs incurred by the Administrator of the United States Environmental Protection Agency (EPA) and the United States Department of Justice (DOJ) for response actions at the East Helena Superfund Site in East Helena, Montana (Site), together with accrued interest; and (2) performance of response actions by the 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 Montana (the State) of negotiations with potentially responsible parties (PRPs) regarding the implementation of the remedial design and remedial action for the Site.
- D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Montana Department of Justice Natural Resource Damage Program of these negotiations regarding the release of hazardous substances that may have resulted in injury to the natural resources under State trusteeship.
- E. American Chemet Corporation (Settling Defendant), by entering into this Consent Decree, does not admit any liability arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.
- F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.
- G. The Site is located in and around the City of East Helena, in Lewis & Clark County, Montana, and includes the former ASARCO lead smelter facility, nearby residential subdivisions, commercial properties, rural developments such as farms and homes, railroad right-of-way areas, undeveloped lands, and the American Chemet Corporation Property and facilities.
- H. In November, 1989, EPA issued a Record of Decision selecting response actions under CERCLA to address sources of contamination at the former ASARCO smelter facility and concluded that releases of hazardous substances from the Site may pose an imminent and substantial endangerment to human health and the environment.
- I. On September 17, 2009, EPA issued a second Record of Decision (ROD), for the remedial actions to be implemented at Operable Unit 2 of the Site for residential soils

and undeveloped lands, which includes any property at the Site not formerly owned by ASARCO, LLC, including the Settling Defendant's Property.

- J. Based on the information presently available to EPA, 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 its appendices.
- K. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action set forth in the ROD and the Work to be performed by Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.
- L. 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 expedite the cleanup of the Site and 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.

2. This Consent Decree is entered into voluntarily by the United States and the Settling Defendant. This Consent Decree provides for the performance of a remedial design and remedial action at the Property by the Settling Defendant and the payment of certain response costs incurred by the United States at or in connection with the "East Helena Superfund Site" (Site) generally located at 145 State Highway 282, East Helena, 59635, Lewis & Clark County, Montana.

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

4. EPA and Settling Defendant recognize that this Consent Decree has been negotiated in good faith and that the actions undertaken by Settling Defendant in accordance with this Consent Decree do not constitute an admission of any liability. Settling Defendant does not admit, and retains the right to controvert in any subsequent proceedings other than

proceedings to implement or enforce this Consent Decree, the validity of the findings of facts, conclusions of law, and determinations of this Consent Decree. Settling Defendant agrees to comply with and be bound by the terms of this Consent Decree and further agrees that it will not contest the basis or validity of this Consent Decree or its terms.

III. PARTIES BOUND

5. This Consent Decree applies to and is binding upon the United States and upon the 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 not alter the Settling Defendant's responsibilities under this Consent Decree.

6. Settling Defendant shall ensure that its contractors, subcontractors, and representatives receive a copy of this Consent Decree and comply with this Consent Decree. Settling Defendant shall be responsible for any noncompliance with this Consent Decree.

IV. DEFINITIONS

7. Unless otherwise expressly provided herein, the 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 in the appendices attached hereto and 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. §§ 9601-9675.

"Consent Decree" shall mean this Consent Decree and all Appendices attached hereto (listed in Section XXII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

The term "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 holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"East Helena Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by the EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

“EPA” shall mean the United States 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.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of 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 Paragraph 12 (Notice to Successors-in-Title and Transfers of Real Property), Sections VII (Remedy Review), VIII (Property Requirements) (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), Paragraph 70 (Work Takeover), and Paragraph 15 (Community Involvement). Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and/or State or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“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.

“Operable Unit 2” (OU 2) means those portions of the Site consisting of non-smelter property surface soils in the residential areas (including commercial areas), irrigation ditches, rural developments, and surrounding undeveloped land as they are set forth in EPA’s 2009 Record of Decision.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendant) and the Statement of Work.

“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 and Settling Defendant.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD, as well as any modified standards established pursuant to this Consent Decree or the Statement of Work produced pursuant to this Consent Decree.

“Plaintiff” shall mean the United States.

“Property” shall mean the real property, equipment, facilities, and operations owned by American Chemet Corporation and located at the Site in Lewis & Clark County, Montana, and depicted in Appendix B. The Property’s physical address is 1 Smelter Road, East Helena, Montana 59635.

“Proprietary Controls” shall mean easements or covenants running with the land that: (a) limit land, water, or resource use and/or provide access rights, and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to Operable Unit 2 of the East Helena Site signed on September 17, 2009 by the Regional Administrator, EPA Region 8, or his/her delegate, and all Appendices thereto. The ROD is incorporated by reference as part of this Consent Decree.

“Remedial Action” shall mean all activities Settling Defendant is required to perform under the Consent Decree and the SOW to implement the ROD, the final approved remedial design submission, the approved Remedial Action Work Plan, and other plans approved by EPA, including implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XIX (Retention of Records).

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 14 of this Consent Decree and the Statement of Work, and approved by EPA, and any modifications thereto.

“Remedial Design” shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 14 and the Statement of Work, and approved by EPA, and any modifications thereto.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

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

“Settling Defendant” shall mean American Chemet Corporation, a Montana Corporation holding Montana Secretary of State Identification No.: D030024, and whose registered agent is Brad Smith, 145 Highway 282, P. O. Box 1160, East Helena, Montana 59635-0000.

“Site” shall mean the East Helena Superfund Site, EPA I.D. No. 0830, placed on the EPA National Priorities List in September 21, 1984, encompassing the Town of East Helena, including the Settling Defendant’s Property, the former ASARCO lead and zinc smelter facility, and certain undeveloped lands around the Town of East Helena, in Lewis & Clark County, Montana, and depicted generally on the map attached as Appendix C.

“State” shall mean the State of Montana.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the CERCLA Response/Remedial Design Work by Settling Defendant that is agreed upon under this Consent Decree, as set forth in Appendix A to this Consent Decree, and any modifications made thereto in accordance with this Consent Decree.

“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 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 the EPA.

“Waste Material” or “Hazardous Substance” shall mean: (a) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under section 1004(27) of the Resource Conservation Recovery Act (RCRA), 42 U.S.C. § 6903(27); and (d) any “hazardous substance” or “deleterious substance” under the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-705 through 729, MCA.

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

V. GENERAL PROVISIONS

8. 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 by the design and implementation of response actions at the Property by Settling Defendant, to pay Future

Response Costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant as provided in this Consent Decree.

9. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the Statement of Work, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. Settling Defendant shall pay the United States for Future Response Costs as provided in this Consent Decree.

10. 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 and the Statement of Work. Activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

11. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), 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 XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in sub-Paragraph 11.a and required for the Work, provided that Settling Defendant has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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.

12. Notice to Successors-in-Title and Transfers of Real Property.

a. For any real property owned by Settling Defendant located at the Site, Settling Defendant shall, within fifteen (15) days after the Effective Date, submit to EPA for review and approval a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice also shall describe the land use restrictions, if any, required by Section VIII (Property Requirements) and shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Settling Defendant shall record the notice within ten (10) days after EPA's

approval of the notice. Settling Defendant shall provide EPA with a certified copy of the recorded notice within ten (10) days after recording such notice.

b. Settling Defendant shall, at least sixty (60) days prior to any Transfer of any real property located at the Site, give written notice: (1) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (2) to EPA regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

c. Settling Defendant may Transfer any real property located at the Site only if: (1) any Proprietary Controls required by Section VIII have been recorded with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant and the United States, to: (i) allow access and restrict land/water use, pursuant to Section VIII, (ii) record any Proprietary Controls on the real property, pursuant to Section VIII, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Section VIII, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this sub-Paragraph, Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States under Section X (Payment of Future Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

d. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

VI. PERFORMANCE OF WORK BY SETTLING DEFENDANT

13. Coordination and Supervision.

a. Project Coordinators.

i. Settling Defendant shall designate and notify the EPA of its Project Coordinator and Alternate Project Coordinator. Settling Defendant's Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Defendant's Project Coordinator may not be an attorney representing the Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendant's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work. Settling Defendant's current Project Coordinator shall be:

Daniel B. Brimhall, Vice President
American Chemet Corporation
P.O. Box 1160
East Helena, MT 59635
(406) 441-2011

ii. EPA shall designate and notify the Settling Defendant of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's current Project Coordinator shall be:

Betsy Burns
USEPA Region 8 - Montana Operations Office
Federal Building
10 West 15th St., Suite 3200
Mail Code: 8MO
Helena, MT 59626
(406) 457-5013

iii. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

iv. Settling Defendant's Project Coordinator shall meet with EPA's Project Coordinator at least monthly.

b. **Supervising Contractor.** Settling Defendant's proposed Supervising Contractor must have a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. Settling Defendant has chosen Tetra Tech, Inc. to be its Supervising Contractor for the Work to be performed, and to be responsible for administration of the Work required by this Agreement. Tetra Tech, Inc. may be contacted as follows:

Katy Norris
Tetra Tech, Inc.
7 West Sixth Avenue, Suite 612
Helena, MT 59601
(406) 441-3268
Kathryn.Norris@tetratech.com

d. **Procedures for Disapproval/Notice to Proceed.**

i. Settling Defendant shall designate, and notify EPA, within ten (10) days after the Effective Date, of the name, contact information, and qualifications

of the Settling Defendant's proposed Project Coordinator and Supervising Contractor.

ii. EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Settling Defendant shall, within thirty (30) days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Settling Defendant may select any coordinator/contractor covered by an authorization to proceed and shall, within twenty-one (21) days, notify EPA of Settling Defendant's selection.

iii. Settling Defendant may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of sub-Paragraphs 13.d.i and 13.d.ii, above.

iv. Notwithstanding the procedures of sub-Paragraphs 13.d.i through 13.d.ii, Settling Defendant has proposed, and EPA has authorized Settling Defendant to proceed, regarding the Project Coordinator and Supervising Contractor identified in sub-Paragraphs 13.a.i and 13.c:

14. Performance of Work in Accordance with Statement of Work, the 1989 and 2009 CERCLA RODs.

a. Settling Defendant shall: (a) develop the Remedial Design; (b) perform the Remedial Action; and (c) operate, maintain, and monitor the effectiveness of the Remedial Action; all in accordance with the Statement of Work and all EPA-approved, conditionally-approved, or modified deliverables as required by the Statement of Work. All deliverables required to be submitted for approval under the Consent Decree or Statement of Work shall be subject to approval by EPA in accordance with the Statement of Work.

b. Settling Defendant agrees to refrain from any activity on the Property that impairs or which could impair the protectiveness or effectiveness of the remedies selected under the 1989 CERCLA ROD, the 2009 CERCLA ROD, or the RCRA corrective action under the April 6, 1998, consent decree in *United States v. ASARCO Incorporated*, Civil Action No: CV 98-3-H-CCL (D. Mt.), as amended, which addresses both Site-wide groundwater and soil contamination on the former ASARCO smelter property.

c. Within ninety (90) days of the Effective Date of this Consent Decree, in accordance with Statement of Work and the 1989 and 2009 RODs, Settling Defendant shall address four of its six State-registered wells on the Property as follows:

i. Inactive Injection Well (GWIC Id: 62319). Use of this inactive injection well located in the north central portion of the complex shall be discontinued, and the well abandoned by a licensed water well contractor pursuant to State requirements found in the Administrative Rules of Montana (ARM) 36.21.670.

The licensed water well contractor shall complete the Montana Well Abandonment Report and submit the form to the Montana Bureau of Mines and Geology, Ground Water Information Center.

ii. Well #1 (No GWIC Id). An April 10, 2012, Hydrometrics well inventory conducted for the Montana Environmental Custodial Trust indicates this well was "capped and taken out of use sometime prior to 1998." Verification of abandonment of this well located in the Copper Blender Building shall be performed by a licensed water well contractor. The licensed water well contractor shall complete a Montana Well Abandonment Report and submit the Report to the Ground Water Information Center.

iii. Well #2 (GWIC Id: 62317). Use of this active pumping well providing makeup feed water to the scrubber blowdown circuit and potable water for non-consumptive domestic use shall be discontinued, and the well abandoned by a licensed water well contractor pursuant to State requirements found in the Administrative Rules of Montana (ARM) 36.21.670. The licensed water well contractor shall complete a Montana Well Abandonment Report and submit the Report to the Ground Water Information Center.

iv. Well #3 (GWIC Id: 62315). Use of this active pumping well providing make-up water for the facility plant water circuit, which includes cooling water for the #1 Copper Furnace and other plant systems, shall be discontinued, and the well abandoned by a licensed water well contractor pursuant to State requirements found in the Administrative Rules of Montana (ARM) 36.21.670. The licensed water well contractor shall complete a Montana Well Abandonment Report and submit the Report to the Ground Water Information Center.

Note: The Montana Well Abandonment Report can be found at:
http://dnrc.mt.gov/divisions/water/operations/board-of-water-well-contractors/divisions/water/operations/docs/bwwc/well_abandonment_form.pdf

d. Within ninety (90) days of the Effective Date of this Consent Decree, in accordance with the Statement of Work, Settling Defendant shall address the remaining two of its six State-registered wells on the Property as follows:

i. Active Injection Well (GWIC Id: 160336). Settling Defendant shall install and maintain a flow meter on this injection well and provide EPA and the Montana Environmental Custodial Trust with access to the meter.

ii. Well #4 (GWIC Id: 62316). This well pumps continuously and provides non-contact cooling water for the #17 Copper furnace. Pumping from this well shall be limited and not exceed seven (7) gallons per minute.

e. In addition to the access provisions set forth in paragraph 23, upon the Effective Date of this Consent Decree, Settling Defendant agrees to provide access to EPA, including EPA's contractors, and the Montana Environmental Custodial Trust,

including the Trust's contractors, to the Property for the purpose of monitoring the active injection well (GWIC Id: 160336) and active pumping Well #4. (Permit No. GWIC Id: 62316). If arsenic or selenium contamination is identified in any monitored wells, EPA will advise American Chemet and may require the use of these wells to be terminated.

f. **Emergencies and Releases.** Settling Defendant shall comply with the emergency and release response and reporting requirements under the Statement of Work. Subject to Section XV (Covenants by Plaintiff), nothing in this Consent Decree, including the Statement of Work, limits any authority of Plaintiff: (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. If, due to Settling Defendant's failure to take appropriate response action under the Statement of Work, EPA takes such action instead, Settling Defendant shall reimburse EPA under Section X (Payment of Future Response Costs) for all costs of the response action.

15. **Community Involvement.** If requested by EPA, Settling Defendant shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, the Statement of Work. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payment of Future Response Costs).

16. **Modification of Statement of Work or Related Deliverables.**

a. If EPA determines that it is necessary to modify the work specified in the Statement of Work and/or in deliverables developed under the Statement of Work in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy set forth in the Statement of Work, then EPA may notify Settling Defendant of such modification. If Settling Defendant objects to the modification they may, within thirty (30) days after EPA's notification, seek dispute resolution under Section XIII.

b. The Statement of Work and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendant shall implement all work required by such modification. Settling Defendant shall incorporate the modification into the deliverable required under the Statement of Work, as appropriate.

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

17. Nothing in this Consent Decree, the Statement of Work, or any deliverable required under the Statement of Work, constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the Consent Decree or Statement of Work or any related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

18. **Periodic Review.** Settling Defendant shall conduct, in accordance with the Statement of Work, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, to determine whether the Remedial Action is protective of human health and the environment.

19. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

20. **Opportunity to Comment.** Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by 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.

21. **Settling Defendant's Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the Property, EPA may require Settling Defendant to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 66 or 67 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute: (a) EPA's determination that the reopener conditions of Paragraph 66 or 67 are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that the Remedial Action is not protective or EPA's selection of further response actions shall be resolved pursuant to Paragraph 50 (Record Review).

22. **Submission of Plans.** If Settling Defendant is required to perform further response actions pursuant to Paragraph 21, it shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of Work by Settling Defendant). Settling Defendant shall implement the approved plan in accordance with this Consent Decree.

VIII. PROPERTY REQUIREMENTS

23. **Proprietary and Institutional Controls.**

a. In addition to those Proprietary or Institutional Controls set forth herein, after completion of the Work under Section VI (Performance of Work by Settling Defendant) EPA shall determine whether and to what extent any additional Proprietary or Institutional Controls are necessary for the Settling Defendant to establish on the

Property. If any part of the Remedial Action occurs on property not owned by Settling Defendant, Settling Defendant shall use best efforts to secure the cooperation of the owner of that property in executing and recording, in accordance with the procedures of this Paragraph 23, Proprietary Controls that: (i) grant EPA and Settling Defendant a right of access to conduct or oversee any activity implementing the Consent Decree, including those activities listed in sub-Paragraph 23.c; and (ii) grant the right to enforce the land, water, or other resource use restrictions that may be required under sub-Paragraph 23.b and d.

b. Groundwater underlying the Site, including groundwater underlying the Property and the former ASARCO smelter, is contaminated with hazardous substances and is the subject of corrective action by EPA under RCRA. Injecting or withdrawing groundwater may affect the dimensions, direction, or rate of attenuation of the contaminated groundwater plume and adversely affect the RCRA corrective action. Accordingly, until groundwater contamination is reduced to below Safe Drinking Water Act Maximum Contaminant Levels or Montana Numeric Water Quality Standards found in Circular DEQ-7, Settling Defendant:

i. is prohibited from using groundwater for human consumption or for other purposes that may create a risk to human health or the environment.

ii. is prohibited from installing any new well(s) on the Property or connecting to any other new or existing wells after the Effective Date of this Agreement, and

iii. agrees to comply with all federal, state or local zoning or groundwater control restrictions that prohibit or otherwise govern the installation of water or injection wells.

c. **Access Requirements.** The following is a list of activities for which access is required regarding the Property:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States;

iii. Investigating contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the Statement of Work;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 70 (Work Takeover);

viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XVIII (Access to Information);

ix. Assessing Settling Defendant's compliance with the Consent Decree;

x. Determining whether the 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

xi. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

d. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water or other resource use restrictions potentially applicable to the Property, to be implemented by the Settling Defendant:

i. Prohibitions on activities that could interfere with the Remedial Action or any RCRA Corrective Action at the Site;

ii. Prohibitions on the use of contaminated groundwater;

iii. Prohibitions on activities that could result in exposure to contaminants in subsurface soils and groundwater;

iv. Measures ensuring that any new structures on the Site will not be constructed in the following manner which could interfere with the Remedial Action; and

v. Measures ensuring that any new structures on the Site will be constructed in a manner that will minimize potential risk of inhalation of contaminants.

e. **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, Settling Defendant, 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/or the State as appropriate) is an "agency" or a party expressly granted the right of access and the right to enforce the covenants, including as a "third-party beneficiary," if necessary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

f. **Initial Title Evidence.** Settling Defendant shall, within forty-five (45) days after the Effective Date:

i. **Record Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Settling Defendant, or "To Be Determined;" (ii)

covers the Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Property; (iv) identifies all record matters that affect title to the Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (v) includes complete, legible copies of such Prior Encumbrances; and

ii. **Non-Record Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

iii. For general guidance on both record and non-record forms of title evidence acceptable to the United States, see the U.S. Department of Justice Title Standards 2001, available at http://www.justice.gov/enrd/Current_topics.html.

g. **Release or Subordination of Prior Liens, Claims, and Encumbrances.**

i. Settling Defendant shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Property revealed by the title evidence or otherwise known to the Settling Defendant, unless EPA waives this requirement as provided under sub-Paragraphs g.ii-iv.

ii. Settling Defendant may, by the deadline under sub-Paragraph f, submit an initial request for waiver of the requirements of sub-Paragraph g.i regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the remedy or result in unacceptable exposure to Waste Material.

iii. Settling Defendant may, within ninety (90) days after the Effective Date, or if an initial waiver request has been filed, within forty-five (45) days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of sub-Paragraph g.i regarding any particular Prior Encumbrance on the grounds that Settling Defendant could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

iv. The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

v. Settling Defendant shall complete its obligations under sub-Paragraph g.i regarding all Prior Encumbrances: within one-hundred-eighty (180) days after the Effective Date; or if an initial waiver request has been filed, within one-hundred-thirty-five (135) days after EPA's determination on the initial waiver

request; or if a final waiver request has been filed, within ninety (90) days after EPA's determination on the final waiver request.

h. Update to Title Evidence and Recording of Proprietary Controls.

i. Settling Defendant shall submit to EPA for review and approval, by the deadline specified in sub-Paragraph f, all draft Proprietary Controls and draft instruments addressing Prior Encumbrances.

ii. Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Settling Defendant shall, within fifteen (15) days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under sub-Paragraph f. If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Settling Defendant shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Settling Defendant shall secure the release, subordination, modification, or relocation under sub-Paragraph g.i, or the waiver under sub-Paragraphs g.ii-iv, regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

iii. If Settling Defendant submitted a title insurance commitment under sub-Paragraph f.i, then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Settling Defendant shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to the United States, Settling Defendant, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form.

iv. Settling Defendant shall, within thirty (30) days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide to the United States and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

i. Settling Defendant shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Consent Decree. Settling Defendant and EPA's Project Manager may agree in writing on a different reporting frequency and the contents of the report.

j. Settling Defendant shall not Transfer its Property until it has executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Property in accordance with this Paragraph.

24. **Agreements Regarding Access and Non-Interference.**

a. Settling Defendant shall, with respect to any owner of property other than Settling Defendant's, use best efforts to secure from such owner an agreement, enforceable by Settling Defendant and by Plaintiff, providing that such owner shall, with respect to that owner's property:

i. Provide Plaintiff and the Settling Defendant, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Consent Decree, including those listed in Paragraph 23.c (Access Requirements); and

ii. Refrain from using such property in any manner that EPA determines will: (i) pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions include those listed in sub-Paragraph 23.d (Land, Water, or Other Resource Use Restrictions).

b. Settling Defendant shall not Transfer its Property without first securing EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Settling Defendant and Plaintiff; and (ii) requires the transferee to provide access to and to refrain from using the Property to the same extent as is provided under Paragraph 23.

25. **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 Proprietary Controls, agreements, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Property, as applicable. If Settling Defendant is unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If the EPA deems it appropriate, it may assist Settling Defendant or take independent action to obtain such Proprietary Controls, agreements, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payment of Future Response Costs).

26. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of State or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

27. In the event of any Transfer of the Property, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

28. Notwithstanding any provision of the Consent Decree, Plaintiff 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.

IX. FINANCIAL ASSURANCE

29. In order to ensure completion of the Work, Settling Defendant shall secure financial assurance, initially in the amount of \$100,000 (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the “Financial Assurance” category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Settling Defendant may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Settling Defendant that Settling Defendant meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, State, or tribal environmental obligations financially assured through the use of a financial test or guarantee, accompanied by a standby funding commitment, which obligates Settling Defendant to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of Settling Defendant; or (2) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to EPA’s satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal,

State, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

30. If Settling Defendant provides financial assurance by means of a demonstration or guarantee under sub-Paragraph 31.e or 29.f, Settling Defendant shall also comply and shall ensure that its guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than thirty (30) days after the Effective Date; (b) the annual resubmission of such documents within ninety (90) days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than thirty (30) days, in accordance with Paragraph 32, after any such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Settling Defendant agrees that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of sub-Paragraph 29.e or 29.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, State, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Consent Decree; (3) the terms "owner" and "operator" include Settling Defendant's demonstration or obtaining a guarantee under sub-Paragraph 29.e or 29.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

31. Settling Defendant shall diligently monitor the adequacy of the financial assurance. If Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Settling Defendant shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Settling Defendant of such determination. Settling Defendant shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Settling Defendant, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Settling Defendant shall follow the procedures of Paragraph 33 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendant's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Work in accordance with the terms of this Consent Decree.

32. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 70, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 29.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with sub-Paragraph 32.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 70, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under sub-Paragraph 29.e or 29.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendant shall, within ten (10) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 32 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the East Helena Superfund 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 EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 32 must be reimbursed as Future Response Costs under Section X (Payment of Future Response Costs).

33. Modification of Amount, Form, or Terms of Financial Assurance. Settling Defendant may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 29, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Settling Defendant of its decision to accept or reject a requested reduction or change pursuant to this Paragraph. Settling Defendant may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution

provisions of this Consent Decree or in any other forum. Within thirty (30) days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Settling Defendant shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 29.

34. **Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendant may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under the Statement of Work; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENT OF FUTURE RESPONSE COSTS

35. **Payment by Settling Defendant of Future Response Costs.** Settling Defendant shall pay to EPA all Future Response Costs that are not inconsistent with the NCP.

a. On a periodic basis, EPA will send Settling Defendant a bill requiring payment that includes a "Scorpios Report" cost summary, which documents direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. Settling Defendant shall make all payments within thirty (30) days after Settling Defendant receives each bill requiring payment, except as otherwise provided in Paragraph 37 (Contesting Future Response Costs), in accordance with sub-Paragraph 36.a (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by Settling Defendant pursuant to sub-Paragraph 36.a shall be deposited by EPA in the East Helena Superfund Site Special Account to be retained and used by EPA to conduct or finance response actions at or in connection with the Site, or to be transferred to the EPA Hazardous Substance Superfund.

36. **Payment Instructions for Settling Defendant.**

a. **Future Response Costs Payments and Stipulated Penalties.** Settling Defendant shall, within thirty (30) days of receipt of the bill, send a cashier's check, certified check, or official bank check for the amount of those costs, made payable to the "Hazardous Substance Superfund," referencing the name and address of the party making the payment, to the following address:

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

b. For all payments made under this Paragraph, Settling Defendant must include references to the Site/Spill ID and DJ numbers. At the time of any payment

required to be made in accordance with this Paragraph, Settling Defendant shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with Paragraph 92 (Notices and Submissions). All notices must include references to the Site/Spill ID and DJ numbers.

37. **Contesting Future Response Costs.** Settling Defendant may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), to contest any Future Response Costs billed under Paragraph 36 (Payment by Settling Defendant of Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision of the NCP. Such Notice of Dispute shall be submitted in writing within thirty (30) days after receipt of the contested bill and must be sent to the United States pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Settling Defendant submits a Notice of Dispute, Settling Defendant shall pay all uncontested Future Response Costs to the United States within thirty (30) days after Settling Defendant's receipt of the bill requiring payment. Simultaneously, Settling Defendant shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), 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 XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States. 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 they did not prevail to the United States within seven (7) days after the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with sub-Paragraph 36.a (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

38. **Interest.** In the event that any payment of Future Response Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. Interest shall accrue through the date of 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 54 (Stipulated Penalty Amounts – Work).

XI. INDEMNIFICATION AND INSURANCE

39. 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 EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendant shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and 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 Settling Defendant's 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 EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States all costs it 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 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 this Paragraph, and shall consult with Settling Defendant prior to settling such claim.

40. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action 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 Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify, save 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 Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

41. **Insurance.** No later than fifteen (15) days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to the Statement of Work, commercial general liability insurance with limits of \$1 million, for any one occurrence, and automobile liability insurance with limits of \$1million, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Decree. In addition, 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 commencement of the Work, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to 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 that is not maintained by the contractor or subcontractor.

XII. FORCE MAJEURE

42. "Force majeure," for purposes of this Consent Decree, is defined as any unforeseen 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 exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator, within five (5) business days 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 EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or 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. 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 or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 42 and whether Settling Defendant has exercised its best efforts to address the effects of the force majeure event, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely or complete notices under this Paragraph.

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

45. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) in response to EPA's decision, it shall do so no later than fifteen (15) days after receipt of 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, 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 42 and 43. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the relevant obligations of this Consent Decree identified to EPA and the Court.

46. The failure by EPA to timely complete any obligation under the Consent Decree or under the Statement of Work is not a violation of the Consent Decree; provided, however, that if such failure prevents Settling Defendant from meeting one or more deadlines in the Statement of Work, Settling Defendant may seek relief under this Section.

XIII. DISPUTE RESOLUTION

47. 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.

48. A dispute shall be considered to have arisen when one party sends the other party 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. 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.

49. 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 five (5) 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 Paragraph 50 (Record Review) or 51.

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 Paragraph 50 (Record Review) or 51. Within twenty (20) 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 Paragraph 50 (Record Review) or 51, the Parties 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 Paragraphs 50 and 51.

50. **Record Review.** 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, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and 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 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 EPA Region 8 Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation will issue a final administrative decision resolving the dispute based on the administrative record described in sub-Paragraph a, above. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to sub-Paragraphs c and d, below.

c. Any administrative decision made by EPA pursuant to this Paragraph 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 Deputy Director of the EPA Region 8 Montana Operations Office 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 this Paragraph.

51. 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. The EPA Region 8 Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 49. The decision of the EPA Region 8 Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation 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 United States 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 K (CERCLA Section 113(j) Record Review of ROD and Work) of Section I (Background), judicial review of any dispute governed by Section XIII (Dispute Resolution) shall be governed by applicable principles of law.

52. 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, except as provided in Paragraph 37 (Contesting Future Response Costs), 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, as provided for in Section XIII (Dispute Resolution). 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 may be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

53. Settling Defendant shall be liable as specified below for stipulated penalties in the amounts set forth in Paragraphs 54 and 55 to the United States for failure to comply with the requirements of this Consent Decree, unless excused under Section XII (Force Majeure). "Compliance" by Settling Defendant shall include completion of all activities and obligations, including payments, required under this Consent Decree, or any deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the Statement of Work, and any deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

54. **Stipulated Penalty Amounts – Work.** The following stipulated penalties shall accrue per violation per day for noncompliance with Work identified pursuant to Section VI (Performance of Work by Settling Defendant) including payments but excluding deliverables:

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

55. **Stipulated Penalty Amounts - Deliverables.**

a. **Material Defects.** If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under the Statement of Work due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 53. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendant’s submissions under this Consent Decree.

b. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the Consent Decree:

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

56. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 70 (Work Takeover), Settling Defendant shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 32 (Access to Financial Assurance) and 70 (Work Takeover).

57. 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: (a) with respect to a deficient submission under the Statement of Work, during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (b) with respect to a decision by the EPA Region 8 Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant’s reply to EPA’s Statement of Position is received until the date that the EPA Region 8 Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (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 in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

59. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days after Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with instructions in sub-Paragraphs 36.a and b (Future Response Costs Payments and Stipulated Penalties).

60. Penalties shall continue to accrue as provided in Paragraph 57 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within fifteen (15) days after the agreement or the receipt of 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 EPA within sixty (60) days after receipt of the Court's decision or order, except as provided in sub-Paragraph c, below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within sixty (60) days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

61. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due and payable until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 59 until the date of payment. If Settling Defendant fails to pay stipulated

penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

63. 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 Consent 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, 42 U.S.C. § 9622(l), 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 in this Consent Decree except in the case of a willful violation of this Consent Decree.

64. 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.

XV. COVENANTS BY PLAINTIFF

65. **Covenants for Settling Defendant by the United States.** Except as provided in Paragraphs 66 and 67 (United States' Pre- and Post-Certification Reservations), and 69 (General Reservations 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 relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of Remedial Action Completion by EPA pursuant to the Statement of Work. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to the Settling Defendant and do not extend to any other person.

66. **United States' Pre-Certification 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, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of Remedial Action Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

67. **United States' Post-Certification 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, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if,

(a) subsequent to Certification of Remedial Action Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) 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.

68. For purposes of Paragraph 66 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the Site and the administrative record supporting the ROD. For purposes of Paragraph 67 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Remedial Action Completion and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Remedial Action Completion.

69. **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 Plaintiff's covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for 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 on the ownership of the Site by Settling Defendant when such ownership commences after signature of this Consent Decree by Settling Defendant;
- d. liability based on the operation of the Site by Settling Defendant when such operation commences after signature of this Consent Decree by Settling Defendant and does not arise solely from Settling Defendant's performance of the Work;
- e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for 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 EPA, after signature of this Consent Decree by Settling Defendant;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance

Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 16 (Modification of Statement of Work or Related Deliverables);

70. Work Takeover.

a. In the event EPA determines that Settling Defendant: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of ten (10) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in sub-Paragraph 70.a, Settling Defendant has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Settling Defendant in writing (which may be transmitted electronically) if EPA determines that implementation of a Work Takeover is warranted under this sub-Paragraph. Funding of Work Takeover costs is addressed under Paragraph 32 (Access to Financial Assurance).

c. Settling Defendant may invoke the procedures set forth in Paragraph 50 (Record Review), to dispute EPA’s implementation of a Work Takeover under Paragraph 70. However, notwithstanding Settling Defendant’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 70 until the earlier of (1) the date that Settling Defendant’s remedy, to EPA’s satisfaction, of the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 50 (Record Review) requiring EPA to terminate such Work Takeover.

71. 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.

XVI. COVENANTS BY SETTLING DEFENDANT

72. **Covenants by Settling Defendant.** Subject to the reservations in Paragraph 74, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site, the Work, past response actions regarding 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 through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree; or

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

73. Except as provided in Paragraphs 76 (Waiver of Claims by Settling Defendant) and 83 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in sub-Paragraphs 69.a (claims for failure to meet a requirement of the Consent Decree), g (criminal liability), and h (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

74. 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, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, 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, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her 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, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's deliverables or activities.

75. 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).

76. Waiver of Claims by Settling Defendant.

a. 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:

i. **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

ii. **De Minimis/Ability to Pay Waiver.** For response costs relating to the Site against any person that has entered or in the future enters into a final

CERCLA § 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers.

i. The waivers under this Paragraph 76 shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against the Settling Defendant.

ii. The waiver under sub-Paragraph 76.a.i (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

77. Except as provided in Paragraph 76 (Waiver of Claims by Settling Defendant), 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 XVI (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

78. 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.

79. 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, except for the State; provided, however, that if the United States exercises rights under the reservations in Section XV (Covenants by Plaintiff), other than in sub-Paragraphs 69.a (claims for failure to meet a requirement of the Consent Decree), g (criminal liability), or h (violations of federal/state law during or after implementation of the Work), 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.

80. 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 each 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).

81. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

82. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten (10) days after service of the complaint on Settling Defendant. In addition, Settling Defendant shall notify the United States 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.

83. **Res Judicata and Other Defenses.** 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 XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

84. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Settling Defendant’s 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 regarding the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

85. Privileged and Protected Claims.

a. Settling Defendant may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided Settling Defendant complies with sub-Paragraph b, and except as provided in sub-Paragraph c.

b. If Settling Defendant asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendant shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. Settling Defendant shall retain all Records that it claims to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendant's favor.

c. Settling Defendant may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Settling Defendant is required to create or generate pursuant to this Consent Decree.

86. Business Confidential Claims. Settling Defendant may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential 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). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant that the Records 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 Records without further notice to Settling Defendant.

87. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the Statement of Work and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree.

88. Notwithstanding any provision of this Consent Decree, Plaintiff 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.

XIX. RETENTION OF RECORDS

89. Until ten (10) years after EPA's Certification of Work Completion under the Statement of Work, Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that 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 must retain, in addition, all 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 Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, 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 Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

90. At the conclusion of this record retention period, Settling Defendant shall notify the United States at least ninety (90) days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in Paragraph 85 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

91. Settling Defendant certifies individually 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 (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA 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), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

92. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Decree must be in writing unless otherwise specified. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the persons specified below at the addresses specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. 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 the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-11122

As to EPA:

Superfund Branch Chief
USEPA Region 8 - Montana Operations Office
Federal Building
10 West 15th St., Suite 3200
Mail Code: 8MO
Helena, MT 59626

and:

Remedial Project Manager
East Helena Superfund Site
USEPA Region 8 - Montana Operations Office
Federal Building
10 West 15th St., Suite 3200
Mail Code: 8MO
Helena, MT 59626
406-457-5013.

**As to the Regional Financial
Management Officer:**

Technical Enforcement Specialist
U. S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Mail Code: 8ENF-RC
Denver, Colorado 80202-1129
303-312-6772

**At to EPA Cincinnati Finance
Center:**

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to Settling Defendant:

Daniel B. Brimhall, Vice President
American Chemet Corporation
P.O. Box 1160
East Helena, MT 59635 dbrimhall@chemet.com
(406) 441-2011

As to Settling Defendant:

Katy Norris
Tetra Tech, Inc.
7 West Sixth Avenue, Suite 612
Kathryn.Norris@tetrattech.com
(406) 441-3268

XXI. RETENTION OF JURISDICTION

93. 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 XIII (Dispute Resolution).

XXII. APPENDICES

94. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Statement of Work.

“Appendix B” is a description and/or map of the Property

“Appendix C” is the description and/or map of the Site.

XXIII. MODIFICATION

95. Except as provided in Paragraph 16 (Modification of Statement of Work or Related Deliverables), material modifications to this Consent Decree, including the Statement of Work, shall be in writing, signed by the United States and Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 16, non-material modifications to this Consent Decree, including the Statement of Work, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Settling Defendant. A modification to the Statement of Work shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the Statement of Work, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

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

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

97. This Consent Decree shall be lodged with the Court for at least 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 that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

98. 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.

XXV. SIGNATORIES/SERVICE

99. Each undersigned representative of a Settling Defendant to this Consent Decree, EPA, 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 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 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. 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.

XXVI. FINAL JUDGMENT

102. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding 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.

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

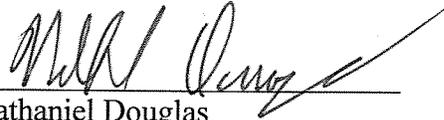
SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for Consent Decree regarding the East Helena Superfund Site.

FOR THE UNITED STATES OF AMERICA:

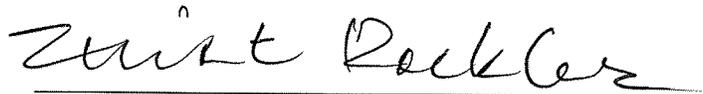
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section



Nathaniel Douglas
Deputy Section Chief

Date

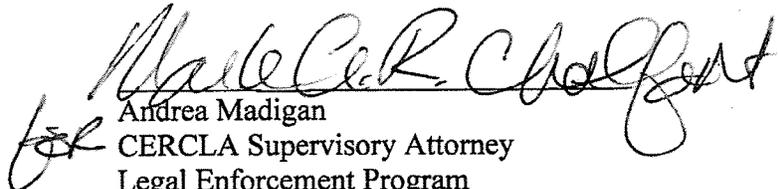
6/24/16
Date



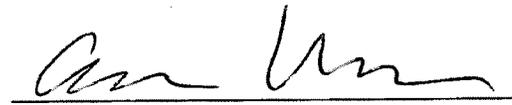
Elliot Rockler
Trial Attorney
P.O. Box 7611
Washington, D.C. 20044-7611
202.514.2653
elliott.rockler@usdoj.gov

Signature Page for Consent Decree regarding the East Helena Superfund Site

6/20/16
Date


for Andrea Madigan
CERCLA Supervisory Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

6/9/16
Date


Aaron Urdiales
Acting Director, Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

6/8/16
Date


for Bill Murray
Director, Superfund Remediation Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Signature Page for Consent Decree regarding the East Helena Superfund Site

FOR AMERICAN CHEMET CORPORATION

6/07/2016
Date


Daniel B. Brimhall, Vice President
American Chemet Corporation
P.O. Box 1160
East Helena, MT 59635

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

R. Allan Payne
Doney Crowley, P.C.
P.O. 1185
Helena, MT 59624
(406) 431-7224
rpayne@doneylaw.com