

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
2 OF THE STATE OF MONTANA

3 IN THE MATTER OF REMEDIAL ACTION AT  
4 THE STIMSON LUMBER COMPANY COOLING  
5 POND IN BONNER, MISSOULA COUNTY,  
6 MONTANA

ADMINISTRATIVE ORDER  
ON  
CONSENT

Docket No. SF-10-0001

7 I.

8 JURISDICTION AND GENERAL PROVISIONS

9 1. This Administrative Order on Consent (AOC) is entered into between Respondent  
10 STIMSON LUMBER COMPANY (Stimson) and the Montana Departments of Environmental  
11 Quality (DEQ) and Justice (DOJ) (collectively referred to as the “Parties”). This AOC requires  
12 Stimson to perform the Work described herein, including: (1) excavation of the Cooling Pond  
13 and Berm; (2) excavation of any additional materials containing contaminants above cleanup  
14 levels described herein in the Cooling Pond, Berm, and Cooling Pond Area; (3) establishment of  
15 the Blackfoot River bank near the southern edge of the Cooling Pond Area at or near its last  
16 natural location and reclamation of the river bank and floodplain to an appropriately stable and  
17 natural appearing condition; and (4) proper disposal of the excavated sediment and fill. This  
18 AOC also requires Stimson to survey and record, as specified herein, the location of the ordinary  
19 high water mark of the Blackfoot River as the boundary between the State-owned Blackfoot  
20 River and the Stimson Bonner Mill Property along that part of the river bank and floodplain that  
21 is reclaimed pursuant to item (3) above.

22 2. The Parties agree that this AOC has been negotiated in good faith and that the  
23 actions undertaken by Stimson in accordance with this AOC do not constitute an admission of  
24 any liability. Except as expressly provided herein, Stimson denies or does not admit, and retains

1 the right to controvert in any subsequent proceedings, other than proceedings to implement or  
2 enforce this AOC, the validity of the findings of fact, conclusions of law, and determinations in  
3 this AOC. Stimson agrees to comply with, and be bound by, the terms of this AOC and further  
4 agrees that it will not contest the jurisdiction (or the facts that constitute jurisdiction), basis or  
5 validity of this AOC or its terms. Stimson further agrees that it will not appeal the issuance of  
6 this AOC or the propriety of any of its terms or conditions.

7           3.       DEQ has the authority to issue this order requiring Stimson to perform the Work  
8 identified in this AOC under both the Montana Water Quality Act, §§ 75-5-101 et seq., MCA,  
9 and the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), §§ 75-10-701  
10 et seq., MCA. In addition, DEQ has the authority to perform the Work identified in this AOC  
11 and to recover the costs of such Work from Stimson under the federal Comprehensive  
12 Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC §§ 9601 et seq.

13           4.       Due to the location of the Cooling Pond and Berm and the threat of erosion or  
14 washout of the Cooling Pond and Berm into the river, DEQ, together with the United States  
15 Environmental Protection Agency (EPA), determined that the contamination in the Cooling Pond  
16 and Berm should be addressed through an interim or “removal” action. DEQ performed an  
17 Expanded Engineering Evaluation/Cost Analysis (EE/CA) and issued an Action Memorandum  
18 evaluating and identifying actions for addressing threatened releases from the Cooling Pond and  
19 Berm. These studies, evaluations and determinations were conducted consistent with the  
20 requirements for non-time-critical removal actions under CERCLA and the National Oil and  
21 Hazardous Substances Pollution Contingency Plan (NCP).

22  
23  
24

1 II.

2 PARTIES BOUND

3 5. This AOC applies to and is binding upon the Parties and their successors and  
4 assigns. Any change in ownership or corporate status of Stimson including, but not limited to,  
5 any transfer of Stimson's assets (including but not limited to its ownership interest in the  
6 Stimson Bonner Mill Property) or real or personal property (including but not limited to any  
7 portion of the Stimson Bonner Mill Property) shall not alter Stimson's status or responsibilities  
8 under this AOC.

9 6. Stimson shall provide its contractors, subcontractors, and representatives involved  
10 in any Work or the Boundary Location a copy of this AOC and contractually require them to  
11 comply with this AOC. Stimson shall be responsible, as among Stimson, DEQ, and DOJ, for  
12 any noncompliance with this AOC by its contractors, subcontractors, and representatives.

13 7. Stimson shall not assign, transfer, convey, sublet or otherwise dispose of any legal  
14 obligation, requirement, right, title or interest set forth in this AOC without the prior written  
15 consent of DEQ and DOJ. Any attempts to assign, transfer, convey, sublet or otherwise dispose  
16 of any requirement of this AOC without DEQ's and DOJ's prior written consent are null and  
17 void.

18 8. With the exception of entering into a lease or leases for a portion of the property  
19 that does not involve property near the Cooling Pond Area or materially affect any requirement  
20 of the AOC, the Work, or the Boundary Location, Stimson shall not assign, transfer, convey,  
21 lease, or otherwise dispose of any right, title or interest in the Stimson Bonner Mill Property  
22 without providing written notice to DEQ and DOJ of the terms of any such disposition at least 30  
23 days prior to the closing of the transaction. Stimson may redact from the copy of such agreement  
24

1 provided to DEQ and DOJ any terms, such as financial information or the purchase price, that  
2 are not material to any requirement of this AOC or the Work.

3  
4 III.

5 DEFINITIONS

6 9. Terms used in this AOC are to be taken and understood in their natural and  
7 ordinary sense unless this AOC indicates that a different meaning was intended. Whenever  
8 terms listed below are used in this AOC, the following definitions shall apply:

9 10. "Action Memo" means the DEQ Action Memorandum dated October 7, 2009,  
10 included as Attachment B to this AOC.

11 11. "AOC" means this document together with all attachments, appendices,  
12 modifications, and amendments incorporated herein.

13 12. "Approved," when used in conjunction with this AOC, means reviewed by DEQ  
14 (and if appropriate, modified), and finally agreed to and approved by DEQ in writing, it being  
15 understood that certain matters, as specified herein, are also subject to review and approval of  
16 DOJ.

17 13. "Berm" means the berm associated with the Cooling Pond, which consists of an  
18 embankment of fill material that DOJ alleges is built on the historic riverbed, floodplain and  
19 bank of the Blackfoot River, as depicted in Figure 2 of the Action Memo and in the Work Plan  
20 attached as Attachment A hereto. The Cooling Pond is located inside the Berm.

21 14. "Bonner Mill" means the former saw mill and plywood manufacturing plant that  
22 was located on the Stimson Bonner Mill Property.

23 15. "Boundary Location" means surveying and recording, as further specified herein,  
24 of the location of the ordinary high water mark of the Blackfoot River as the boundary between

1 the State-owned Blackfoot River and the Stimson Bonner Mill Property along that part of the  
2 river bank and floodplain that is reconstructed pursuant to this AOC.

3 16. "Buyer" shall mean any party that has entered into a buy-sell agreement to  
4 purchase all or any portion of the Stimson Bonner Mill Property from Stimson.

5 17. "CECRA" means the Comprehensive Environmental Cleanup and Responsibility  
6 Act, §§ 75-10-701, et seq., MCA

7 18. "CERCLA" means the Comprehensive Environmental Response, Compensation,  
8 and Liability Act, 42 USC §§ 9601 et seq.

9 19. "Contractor" means the company or companies retained by or on behalf of  
10 Stimson to undertake and complete all or a part of the Work and Boundary Location. A  
11 Contractor and any subcontractors retained by a Contractor shall be deemed to be related by  
12 contract to Stimson.

13 20. "Cooling Pond" means the cooling pond shown in Figure 2 of the Action Memo  
14 and in the Work Plan attached as Attachment A hereto, that collected water from various sources  
15 at the Stimson Bonner Mill Property including boiler blow down water, storm water runoff, and  
16 non-contact cooling water. The Cooling Pond is located inside the Berm along the south bank of  
17 the Blackfoot River.

18 21. "Cooling Pond Area" means the Cooling Pond, the Berm, and adjacent areas  
19 identified for excavation in the Work Plan, including areas immediately west and downstream of  
20 the Cooling Pond in the vicinity of the former fire pond lagoon, and immediately south of the  
21 western portion of the Cooling Pond in the vicinity of the east log track. The Cooling Pond Area  
22 is generally depicted in Figure 2 in the Action Memo, and the final delineation of the area will be  
23 determined by post-excavation confirmation sampling as provided in the Work Plan.

1           22.     “Day” means a calendar day, unless a business day is specified. In computing any  
2 period of time under this AOC, where the last day would fall on a Saturday, Sunday, or State of  
3 Montana holiday, the period shall run until the close of business of the next working day.

4           23.     “DEQ” means the Montana Department of Environmental Quality and any  
5 successor departments or agencies of the State of Montana.

6           24.     “DEQ-7” means the current version of the Montana Numeric Water Quality  
7 Standards for Montana’s surface and ground waters adopted pursuant to the Montana Water  
8 Quality Act, § 75-5-301, MCA.

9           25.     “DOJ” means the Montana Department of Justice and any successor departments  
10 or agencies of the State of Montana.

11          26.     “Effective Date” means the effective date of this AOC as provided in Section  
12 XXXIV (Effective Date).

13          27.     “Respondent” or “Stimson” means Stimson Lumber Company, an Oregon  
14 corporation authorized, under the laws of the State of Montana, to do business in Montana.  
15 Stimson’s principal office is at 520 SW Yamhill, Suite 700, Portland, Oregon. The term  
16 “Respondent,” as well as “Stimson,” shall include Stimson’s successors and assigns and all  
17 persons acting with or through Stimson Lumber Company’s authority and on Stimson Lumber  
18 Company’s behalf, including, but not limited to, Stimson Lumber Company’s officers, directors,  
19 principals, employees, contractors, and agents, provided that nothing in this definition is intended  
20 to make any person acting with or through Stimson Lumber Company's authority or on Stimson  
21 Lumber Company's behalf personally liable for any acts or omissions of Stimson Lumber  
22 Company.

23          28.     “Stimson Bonner Mill Property” means the approximately 170 acres of real  
24 property consisting of the former sawmill and plywood manufacturing plant located along

1 Highway 200 and along the southwest bank of the Blackfoot River in unincorporated Bonner,  
2 Missoula County, Montana. The Stimson Bonner Mill Property consists of Tracts A and B of  
3 Certificate of Survey No. 6099, recorded in the official records of Missoula County, except any  
4 portions thereof owned by the State of Montana.

5 29. "Work" means the actions, including excavation and disposal of the Cooling  
6 Pond, Berm, and contaminated materials in the Cooling Pond Area to be performed by Stimson  
7 under this AOC and the applicable Approved Work Plans, and as described in Section XXIX  
8 (Additional Work).

9 30. "Work Plan" means the plan for remedial action, included as Attachment A to this  
10 AOC,<sup>1</sup> including excavation and disposal of the Cooling Pond, Berm and additional materials  
11 containing contaminants above cleanup levels in the Cooling Pond Area, to be performed by  
12 Stimson under this AOC, as well as any Approved modifications to such Work Plan, as provided  
13 for in Sections XXVIII and XXIX. "Work Plan" shall also mean any additional work plan for  
14 remedial action to be performed by Stimson under this AOC, once Approved by DEQ.

15 31. "WQA" means the Water Quality Act, §§ 75-5-101, et seq., MCA.

16 IV.

17 DEQ FINDINGS OF FACT

18 DEQ makes the following findings of fact:

19 32. The Stimson Bonner Mill Property is generally located in the E ½ of Section 21,  
20 and in the N ½ and the SW ¼ of Section 22, all in Township 13 North, Range 18 West, Montana  
21 Principal Meridian at Latitude 46° 52' 34" North, Longitude 113° 52' 00" West in  
22 unincorporated Bonner, Missoula County, Montana.

23 \_\_\_\_\_  
24 <sup>1</sup> CERCLA divides "response actions" into "removal" actions and "remedial" actions. The type of interim action  
involved here is a "removal" action under CERCLA. CECRA groups all such actions in the definition of "remedial

1           33.     In the mid-1880's the original Bonner Mill was constructed by the Montana  
2 Improvement Company, which had been formed by Marcus Daly and others. By 1900, the  
3 Bonner Mill was owned and operated by the Anaconda Copper Mining Company. In 1972, the  
4 Anaconda Company transferred ownership of the Bonner Mill, including the Stimson Bonner Mill  
5 Property, to Champion International Corporation.

6           34.     In 1993, Stimson acquired the Stimson Bonner Mill Property from Champion  
7 International Corporation, including the Cooling Pond, Berm, and Cooling Pond Area. Stimson  
8 has also operated some of the facilities in this area.

9           35.     In 2008, Stimson closed down the stud mill and plywood plant at the Stimson  
10 Bonner Mill Property.

11          36.     In 2002, the Missoula City-County Health Department discovered a hydrocarbon  
12 sheen on the Fire Pond Lagoon at the Stimson Bonner Mill Property. In 2004, Stimson  
13 conducted certain remedial actions at the Fire Pond Lagoon. Residual Extractable Petroleum  
14 Hydrocarbons (EPH) fractions (C9-C18 range aliphatic, C19-C36 range aliphatic, and C11-C22  
15 range aromatic hydrocarbons) above the then-applicable industrial Risk-Based Screening Levels  
16 (RBSLs) in the Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases  
17 (DEQ 2007) were left in place due to structures restricting excavation. Some petroleum free  
18 product containing PCBs remains between 14 and 26 feet below ground surface in this area.  
19 Groundwater exceeds the RBSL for C19-C36 aliphatic range hydrocarbons. The extent of PCB  
20 contamination in this area, including the groundwater, has not yet been determined.

21          37.     In 2006, DEQ discovered an additional hydraulic oil leak from a hydraulic unit on  
22 the east log track at the Stimson Bonner Mill Property. In 2006, Stimson conducted certain  
23

---

24 Action." See § 75-10-701(20). The term "remedial action" is used in this AOC in the broadest sense, as defined in  
CECRA, and use of the term in this AOC is to be deemed to include "removal action" under CERCLA.

1 remedial actions related to that release, but some of the contamination was left in place due to  
2 structures restricting excavation.

3 38. Stimson was reimbursed \$325,661 from the Montana Petroleum Tank Release  
4 Compensation Fund, *see* § 75-11-313, MCA, for the remedial activities described in the two  
5 preceding paragraphs.

6 39. In 2005, the Stimson Dam, also known as the Bonner Dam, across the Blackfoot  
7 River just downstream of the Berm was removed.

8 40. In 2007, the EPA directed the US Army Corps of Engineers to place  
9 approximately 2,500 cubic yards of riprap along the outside of the exposed wood crib walls of  
10 the Cooling Pond and Berm. The riprap was installed as an interim or temporary measure to  
11 stabilize the toe of the Cooling Pond and Berm against at least a 10-year high-flow event;  
12 however, this action was not designed to protect the Cooling Pond and Berm from being  
13 compromised, eroded, or washed out during a greater flood event.

14 41. In 2006, the State removed 2000 exposed logs from the Blackfoot River  
15 streambed upstream, adjacent to, and downstream of the Berm. In 2008, the State removed an  
16 additional 5,500 exposed logs and some timber cribbing from the streambed adjacent to and  
17 upstream of the Berm.

18 42. On December 17, 2008, the State of Montana filed a complaint against Stimson  
19 Lumber Company in Montana District Court, Fourth Judicial District, Missoula County, Case  
20 No. DV-08-1523. The complaint alleges that the Berm, including the Cooling Pond, is an  
21 encroachment on the riverbed of the Blackfoot River, and seeks money damages, declaratory  
22 relief and an injunction requiring removal of the Berm as a result of its trespass, public nuisance,  
23 and purpresture into the Blackfoot River.

1 43. The Cooling Pond and Berm are located on the historic riverbed of the Blackfoot  
2 River and its floodplain. Portions of the Cooling Pond Area encroach on the streambed of the  
3 Blackfoot River.

4 44. The EPA's Regional Screening Level (RSL) for Chemical Contaminants at  
5 Superfund Sites industrial standard for PCBs in soils is 0.74 milligrams per kilogram (mg/kg).

6 45. PCBs have been detected in the Cooling Pond sediment and fill at concentrations  
7 that exceed the RSL for PCBs.

8 46. Hydrocarbon contamination is present in the Cooling Pond above the RBSL for  
9 C11-C22 range aromatic hydrocarbons of 400 mg/kg.

10 47. Hydrocarbon contamination is present in other portions of the Cooling Pond Area  
11 at levels higher than DEQ's RBSLs.

12 48. PCB contamination is present in other portions of the Cooling Pond Area.  
13 Erosion of sediments or soils in the Cooling Pond Area would potentially release PCB- and/or  
14 hydrocarbon-contaminated sediments directly into the Blackfoot River.

15 49. The DEQ-7 Standard for PCBs in groundwater and Maximum Contaminant Level  
16 (MCL) is 0.5 micrograms per liter ( $\mu\text{g}/\text{l}$ ).

17 50. PCB, in the form of Aroclor 1254, was detected in the groundwater in the Cooling  
18 Pond Area at concentrations exceeding the DEQ-7 Standard for groundwater of 0.5  $\mu\text{g}/\text{l}$ .

19 51. Releases of PCBs, C11-C22 range aromatic hydrocarbons, C9-C18 range  
20 aliphatic hydrocarbons, and C19-C36 range aliphatic hydrocarbons pose a threat to public health,  
21 safety or welfare or the environment. PCBs may cause, among other things, skin and liver  
22 damage in humans. The EPA and the International Agency for Research on Cancer have  
23 determined that PCBs are probably carcinogenic to humans.

1           52.     If contaminated sediments from the Cooling Pond, Berm, or Cooling Pond Area  
2 were to wash downstream, the PCBs, C11-C22 range aromatic hydrocarbons, C9-C18 range  
3 aliphatic hydrocarbons, and C19-C36 range aliphatic hydrocarbons in the sediments could  
4 contaminate the Blackfoot and Clark Fork Rivers.

5           53.     The Berm is built out onto the riverbed and artificially constricts the floodway of  
6 the Blackfoot River adjacent to the Stimson Bonner Mill Property. Portions of the Berm are  
7 built of deteriorating timber cribs. A significant flood event is likely to erode or wash out the  
8 Berm, and the contaminated Cooling Pond sediments along with it. The washout even of any  
9 uncontaminated portions of the Berm would cause pollution as defined by the WQA, § 75-5-  
10 103(25)(a), MCA, because such a washout would constitute a “contamination or other alteration  
11 of the physical, chemical, or biological properties of state waters that exceeds that permitted by  
12 Montana water quality standards.” It would also constitute a discharge of a solid or other  
13 substance into state water that will or is likely to “render the waters harmful, detrimental, or  
14 injurious to...wild animals, birds, fish, or other wildlife.” Any actions to further riprap,  
15 reinforce, or stabilize the Berm would further constrict the floodplain and constitute an additional  
16 and further encroachment on the bed of the Blackfoot River.

17           54.     DEQ has conducted an Engineering Evaluation/Cost Analysis (EE/CA) to assess  
18 this contamination and to evaluate alternatives for addressing the contamination. DEQ released  
19 the EE/CA for a thirty-day public comment period on August 5, 2008. At the request of the  
20 Missoula County Commissioners, DEQ extended the public comment period for an additional 35  
21 days, until October 10, 2008. After receiving and considering public comment, including  
22 comments from Stimson, DEQ issued the Action Memo on October 7, 2009, setting forth its  
23 determinations regarding the proper remedial actions to address these releases and threatened  
24 releases.

V.

CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the preceding Findings of Fact, DEQ has made the following Conclusions of Law and Determinations:

55. Respondent Stimson Lumber Company is a “person” as that term is defined in CECRA, § 75-10-701(16), MCA, and CERCLA, 42 USC § 9601(21).

56. As the owner of the Stimson Bonner Mill Property, Stimson “owns or operates” the Cooling Pond, Berm, and Cooling Pond Area, as that term is defined by § 75-10-701(15), MCA, and by 42 USC § 9601(20). By owning or operating the Cooling Pond, Berm, and Cooling Pond Area, Stimson Lumber Company is a liable person for remedial actions and costs pursuant to § 75-10-715, MCA, and 42 USC § 9607.

57. DEQ has selected a site-specific cleanup level of 0.74 mg/kg for PCBs in soils to determine which wastes must be disposed of offsite (the "PCB Cleanup Level"). This number is based upon the EPA’s Regional Screening Levels for Chemical Contaminants at Superfund Sites industrial standard of 0.74 mg/kg. DEQ has identified this PCB Cleanup Level, which is more stringent than the 1 mg/kg cleanup standard outlined in the Toxic Substances Control Act (TSCA) for high occupancy areas, as further discussed in the Action Memo. DEQ has identified the RBSLs as the cleanup levels for petroleum hydrocarbons.

58. PCBs, C11-C22 range aromatic hydrocarbons, C9-C18 range aliphatic hydrocarbons, and C19-C36 range aliphatic hydrocarbons in the Cooling Pond, Berm, and Cooling Pond Area are hazardous or deleterious substances<sup>2</sup> as that term is defined in § 75-10-

---

<sup>2</sup> Except where otherwise indicated in this AOC, the use of the term “hazardous or deleterious substance(s)” shall be deemed to include “hazardous substance(s)” under CERCLA. That term also includes pollution or contamination under the WQA.

1 701(8), MCA. PCBs are also hazardous substances as that term is defined in 42 USC §  
2 9601(14).

3 59. There have been releases of hazardous or deleterious substances to the Cooling  
4 Pond, Berm, and Cooling Pond Area and there exists a threat of future releases of hazardous or  
5 deleterious substances from the Cooling Pond, Berm, and Cooling Pond Area that may pose an  
6 imminent and substantial endangerment to public health, safety, or welfare or the environment  
7 that require remedial action, as that term is defined in § 75-10-701(20), MCA, as well as  
8 response actions, as that term is defined in 42 USC § 9601(25).

9 60. PCBs, C11-C22 range aromatic hydrocarbons, C9-C18 range aliphatic  
10 hydrocarbons, and C19-C36 range aliphatic hydrocarbons are contaminants and/or wastes under  
11 the WQA, §§ 75-5-103(25), 75-5-605, MCA.

12 61. The WQA, § 75-5-605, MCA, states that it is unlawful to “cause pollution, as  
13 defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they  
14 will cause pollution of any state waters.”

15 62. The release of Cooling Pond sediments, Berm materials, and Cooling Pond Area  
16 waste into the Blackfoot River would cause pollution as defined by the WQA, § 75-5-103(25)(a),  
17 MCA, because it would constitute a “contamination or other alteration of the physical, chemical,  
18 or biological properties of state waters that exceeds that permitted by Montana water quality  
19 standards.” It would also constitute a discharge of a solid or other substance into state water that  
20 will or is likely to “render the waters harmful, detrimental, or injurious to...wild animals, birds,  
21 fish, or other wildlife.”

22 63. The PCBs, C11-C22 range aromatic hydrocarbons, C9-C18 range aliphatic  
23 hydrocarbons, and C19-C36 range aliphatic hydrocarbons present in the Cooling Pond, Berm,  
24

1 and Cooling Pond Area currently violate the WQA, because these wastes have been placed  
2 where they will cause pollution of state waters, the Blackfoot River.

3 64. To comply with applicable law as described herein, Stimson must remove the  
4 entire Cooling Pond and Berm, as well as any structures and contaminated materials in the  
5 Cooling Pond Area.

6 65. Under applicable authorities, DEQ has determined that it is practicable and in the  
7 public interest to enter into this AOC requiring Stimson to perform the Work as defined herein.  
8 DEQ also has determined that Stimson will perform the Work properly and has included in this  
9 AOC terms and conditions that DEQ has determined to be appropriate.

10 VI.

11 ORDER

12 Based upon the foregoing Findings of Fact, Conclusions of Law, and Determinations,  
13 DEQ hereby orders that Stimson comply with all provisions of this AOC, including, but not  
14 limited to, all attachments to this AOC.

15 VII.

16 DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS

17 66. Prior to the execution of this AOC, Stimson has proposed and DEQ has approved  
18 Envirocon, Inc., as Stimson's general contractor for the development of the Work Plan, and  
19 PBSJ Corporation as a sampling and analysis contractor. Stimson shall notify DEQ and DOJ of  
20 the name(s) and qualification(s) of all other contractor(s) or subcontractor(s) retained to perform  
21 any portion of the Work at least ten days prior to commencement of such portion of the Work.

22 67. DEQ retains the right to disapprove of any or all of the other contractors and/or  
23 subcontractors retained. If DEQ disapproves of a selected contractor, Stimson or its Contractor  
24

1 shall seek to retain a different contractor and shall notify DEQ of that contractor's name and  
2 qualifications within ten days of DEQ's disapproval.

3 68. Stimson designates the following as its Project Coordinator and Alternate Project  
4 Coordinator:

5 Project Coordinator:	Alternate Project Coordinator:
6 Steven A. Petrin,	Darl Hagey
7 Stimson Lumber Company	Stimson Lumber Company
8 700 Pacific Building	9360 Highway 200 East
9 520 SW Yamhill Street	PO Box 1120
Portland, OR 97204	Bonner, MT 59823
Phone: (503) 359-8338	Phone: (406) 258-2217
E-mail: spetrin@stimsonlumber.com	E-mail: DHagey@stimson.com

10 69. The Stimson Project Coordinator shall be responsible for administration of all  
11 actions by Stimson required by this AOC. To the greatest extent possible, the Stimson Project  
12 Coordinator shall be present at the project site or readily available during the Work.

13 70. DEQ retains the right at any time to disapprove of the designated Stimson Project  
14 Coordinator and Alternate Project Coordinator. If DEQ disapproves of the designated Stimson  
15 Project Coordinator or Alternate Project Coordinator, Stimson shall retain a different Project  
16 Coordinator and shall notify DEQ of that person's name, mailing address, email address,  
17 telephone number, and qualifications within ten days following DEQ's disapproval. Receipt by  
18 Stimson's Project Coordinator of any notice or communication from DEQ relating to this AOC  
19 shall constitute receipt by Stimson for all purposes.

20 71. DEQ has designated Keith Large as its Project Coordinator. DOJ has designated  
21 Doug Martin as its Project Coordinator. Except as otherwise provided in this AOC, Stimson  
22 shall direct all notices and submissions required by this AOC to DEQ's and DOJ's Project  
23 Coordinators at:  
24

1 Keith Large  
Montana Department of Environmental Quality  
2 1100 N. Last Chance Gulch  
P.O. Box 200901  
3 Helena, MT 59620-0901  
(406) 841-5039  
4 klarge@mt.gov

Doug Martin  
Montana Natural Resource Damage Program  
1301 East Lockey  
P.O. Box 201425  
Helena, MT 59620-1425  
(406) 444 -0234  
dougmartin@mt.gov

5 72. DEQ, DOJ, and Stimson shall each have the right, subject to Paragraph 70, to  
6 change their respective designated Project Coordinators or to request that additional parties be  
7 included in written notices to be given hereunder. Stimson, DEQ and DOJ shall notify the other  
8 parties at least ten days before such a change is made. The initial notification may be made  
9 verbally, but shall be followed by a written notice within ten days.

10 73. The DEQ Project Coordinator may delegate to another State employee or  
11 contractor the duties and authorities of the DEQ Project Coordinator hereunder for a specific  
12 period or task.

### 13 VIII.

#### 14 WORK TO BE PERFORMED

15 74. Stimson shall perform, in accordance with this AOC, and all applicable federal,  
16 state, and local laws and regulations, all actions necessary to implement the Work Plan. The  
17 actions to be implemented generally include:

18 (1) removal of all sediment and fill in the Cooling Pond and Berm; (2) removal of  
19 sediment, fill, or soils in the Cooling Pond Area containing concentrations of PCBs above  
20 0.74 mg/kg (0.22 mg/kg in floodplain areas as outlined in the Work Plan) or petroleum  
21 concentrations above the RBSLs for Extractable Petroleum Hydrocarbons (EPH); (3)  
22 removal of structures that would interfere with the appropriate function of the newly-  
23 configured river bank and floodplain as identified in the Work Plan; (4) transportation  
24 and disposal of any wastes containing PCBs at 50 mg/kg or greater in a TSCA landfill;

1 (5) transportation and disposal of all wastes containing PCBs greater than 0.74 mg/kg but  
2 less than 50 mg/kg or containing EPH above the RBSLs in the Allied Waste Landfill near  
3 Missoula, Montana, which is permitted for Class II solid wastes; (6) placement in  
4 appropriate locations on the Stimson Bonner Mill Property, outside of the Blackfoot  
5 River bed and floodplain, the uncontaminated, removed materials and, as approved by  
6 DEQ, materials containing PCBs lower than 0.74 mg/kg and EPH below the RBSLs; (7)  
7 placement of institutional controls as set forth in Section IX; and (8) reconstruction,  
8 reclamation, and revegetation of the Blackfoot River bank and floodplain to an  
9 appropriately stable and natural appearing state.

10 It is understood that materials associated with Petroleum Tank Release Cleanup Fund Action,  
11 Facility ID 32-04262, Release #4161, containing EPH above RBSLs but PCBs below .74 mg/kg  
12 may be excavated, transported, and disposed pursuant to that Action, Release #4161, subject to  
13 final Petroleum Tank Release Compensation Board approval in accordance with Sections 75-11-  
14 301 through 321, MCA. The costs of Cooling Pond and Berm excavation and the costs of  
15 addressing those materials for which action is required to meet this PCB cleanup level will not be  
16 treated as part of a Petroleum Tank Release Cleanup Fund reimbursable action.

17 75. Stimson shall implement the Work Plan in accordance with the schedule  
18 Approved by DEQ, as outlined within the Approved Work Plan included as Attachment A.  
19 Once Approved, any subsequent modifications to the Work Plan shall be incorporated into and  
20 become fully enforceable under this AOC.

21 76. Stimson shall not commence any Work except in conformance with the terms of  
22 this AOC. Except as expressly authorized, requested, or required by DEQ, Stimson shall not  
23 commence implementation of the Work Plan developed hereunder until the Effective Date of this  
24

1 AOC, and shall not commence implementation of any modifications to the Work Plan without  
2 written DEQ Approval pursuant to Section XXVIII (Modifications).

3 77. At least thirty days prior to the conveyance of any interest in real property at the  
4 Stimson Bonner Mill Property, Stimson shall give written notice to the transferee that the  
5 Cooling Pond, Berm, and Cooling Pond Area are subject to this AOC, and no later than 10 days  
6 prior to the conveyance Stimson shall make a copy of this AOC available to the prospective  
7 transferee. Stimson shall inform Missoula County of the contents of Section IX (Stimson  
8 Bonner Mill Property Access and Institutional Controls), below.

9 78. Health and Safety Plan.

10 Stimson and its Contractor shall develop and implement a Health and Safety Plan for the  
11 protection of workers and other persons present at the project site as well as the public health and  
12 safety during performance of Work under this AOC. Stimson shall provide DEQ a copy of the  
13 Health and Safety Plan, not for review and comment since the plan is solely the responsibility of  
14 Stimson and its Contractor, but so that DEQ personnel may comply with the plan when on-site.

15 79. Quality Assurance and Sampling.

16 A. All sampling and analyses performed pursuant to this AOC shall conform to the  
17 Quality Assurance Project Plan ("QAPP") Approved by DEQ, and shall follow EPA  
18 guidance regarding sampling, quality assurance/quality control ("QA/QC"), data  
19 validation, and chain of custody procedures. Stimson shall require by contract that  
20 the laboratory used to perform the analyses participates in a QA/QC program that  
21 complies with the appropriate EPA guidance. Stimson shall follow, as appropriate,  
22 "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling  
23 QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01,  
24 April 1, 1990), as guidance for QA/QC and sampling. Stimson shall only use

1 laboratories that have a documented Quality System that complies with ANSI/ASQC  
2 E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental  
3 Data Collection and Environmental Technology Programs" (American National  
4 Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans  
5 (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as  
6 determined by DEQ. DEQ may consider laboratories accredited under the National  
7 Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality  
8 System requirements.

9 B. Upon request by DEQ, Stimson shall have such a laboratory analyze samples  
10 submitted by DEQ for QA monitoring. Stimson shall provide to DEQ the QA/QC  
11 procedures followed by all sampling teams and laboratories performing data  
12 collection and/or analysis.

13 C. Upon request by DEQ, Stimson shall allow DEQ or its authorized representatives to  
14 take split and/or duplicate samples. Stimson shall notify DEQ not less than 10 days  
15 in advance of any Work at which sample collection activity may occur, unless shorter  
16 notice is agreed to by DEQ. DEQ shall have the right to take any additional samples  
17 that DEQ deems necessary. Upon request, DEQ shall allow Stimson to take split or  
18 duplicate samples of any samples DEQ takes as part of its oversight of Stimson's  
19 implementation of the Work.

20 80. Post-Removal Site Control.

21 In accordance with the Work Plan schedule, or as otherwise directed by DEQ, Stimson  
22 shall submit a proposal for post-removal site control consistent with any applicable provisions of  
23 Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon DEQ Approval,  
24

1 Stimson shall implement such controls and shall provide DEQ with documentation of all post-  
2 removal site control arrangements.

3 81. Reporting.

4 A. Stimson shall submit a monthly written progress report to DEQ and DOJ concerning  
5 actions undertaken pursuant to this AOC by the 15<sup>th</sup> day of each month after the  
6 Effective Date of this AOC until termination of this AOC, unless otherwise directed  
7 in writing by the DEQ Project Coordinator. These reports shall describe all  
8 significant developments during the preceding month, including the actions  
9 performed and any problems encountered, analytical data received during the  
10 reporting period, and the developments anticipated during the next reporting period,  
11 including a schedule of actions to be performed, anticipated problems, and planned  
12 resolutions of past or anticipated problems.

13 B. Stimson shall submit to DEQ two hard copies and one electronic copy, and to DOJ  
14 one hard copy and one electronic copy, of all plans, reports or other submissions  
15 required by this AOC, including those required by any Approved Work Plan.

16 82. Final Report.

17 Within sixty days after completion of all Work required by this AOC (with the exception  
18 of revegetation activities to be conducted as provided in Section 4.20 of the Work Plan), Stimson  
19 shall submit for DEQ Approval a final report. The report shall summarize the actions taken to  
20 comply with this AOC and demonstrate that Stimson has completed all appropriate remedial  
21 actions, as required by DEQ pursuant to this AOC. The final report shall include a presentation  
22 of the analytical results of all sampling and analyses performed and documentation of the actions  
23 conducted, including attainment of soil cleanup levels, with appendices containing all relevant  
24 documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and

1 permits). The final report shall state that Stimson will properly abandon all monitoring wells for  
2 which closure is Approved by DEQ and conduct all revegetation activities as provided in Section  
3 4.20 of the Work Plan. The final report shall also include the following certification signed by a  
4 person who supervised or directed the preparation of that report:

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

9  
10 83. Off-Site Shipments.

11 A. Prior to any off-Site shipment of waste during the performance of the Work from the  
12 Stimson Bonner Mill Property to an out-of-state waste management facility, Stimson  
13 shall provide written notification of such shipment of waste to the appropriate state  
14 environmental official in the receiving facility’s state and to DEQ. However, this  
15 notification requirement shall not apply to any off-site shipments when the total  
16 volume of all such shipments will not exceed 10 cubic yards. Stimson shall include  
17 in the written notification the following information: 1) the name and location of the  
18 facility to which the waste is to be shipped; 2) the type and quantity of the waste to be  
19 shipped; 3) the expected schedule for the shipment of the waste; and 4) the method of  
20 transportation. Stimson shall notify the state in which the planned receiving facility is  
21 located of major changes in the shipment plan, such as a decision to ship the waste to  
22 another facility within the same state, or to a facility in another state.

23 B. Before shipping any hazardous substances, pollutants, or contaminants from the  
24 performance of the Work to an off-site location, Stimson shall obtain EPA’s

1 certification that the proposed receiving facility is operating in compliance with the  
2 requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. §  
3 300.440. Hazardous substances, pollutants, or contaminants to be shipped off-site  
4 may be shipped only to an off-site facility that complies with the requirements of the  
5 statutory provision and regulation cited in the preceding sentence. The use of the  
6 Allied Waste Class II landfill near Missoula for disposal of materials containing  
7 PCBs at levels below 50 mg/kg and petroleum-contaminated materials as provided in  
8 this AOC is Approved.

9  
10 IX.

11 STIMSON BONNER MILL PROPERTY ACCESS AND INSTITUTIONAL CONTROLS

12 84. Stimson shall provide DEQ and DOJ, and their representatives, including  
13 contractors, with access at all reasonable times to the Stimson Bonner Mill Property, and any  
14 other property to be used for the performance of the Work, for the purpose of conducting any  
15 activity related to this AOC.

16 85. This agreement regarding access shall apply to all the Stimson Bonner Mill  
17 Property where any Work has occurred or will occur, including, but not limited to, all such  
18 portions that are transferred to new owners or successors. Stimson agrees to obtain access  
19 agreements from any transferee or other successor that shall be necessary to comply with this  
20 AOC, including the Work Plan.

21 86. Notwithstanding any provision of this AOC, DEQ and DOJ retain all of their  
22 access authorities and rights, including enforcement authorities related thereto, under the WQA  
23 and CECRA and any other applicable statutes or regulations and the common law.



1 control or that of its contractors or agents relating to environmental conditions at the Cooling  
2 Pond, Berm, and Cooling Pond Area including, but not limited to, sampling, analysis, chain of  
3 custody records, manifests, receipts, or reports, related to such environmental conditions.  
4 Stimson shall provide to DEQ and DOJ an update of all such information within thirty days of  
5 any future DEQ or DOJ request for such an update.

6 91. Stimson may assert that certain documents, records and other information are  
7 privileged under the attorney-client privilege or other privilege recognized by Montana law. If  
8 Stimson asserts such a privilege in lieu of providing documents, it shall provide the State of  
9 Montana with the following: (1) the title of the document, record, or information; (2) the date of  
10 the document, record, or information; (3) the name and title of the author of the document,  
11 record, or information; (4) the name and title of each addressee and recipient; (5) a description of  
12 the contents of the document, record, or information; and (6) the privilege asserted by Stimson.  
13 However, no documents, reports or other information created or generated pursuant to the  
14 requirements of this AOC shall be withheld on the grounds that they are privileged.

15 92. No claim of privilege or copyright shall be made with respect to any data,  
16 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific,  
17 chemical, or engineering data, evidencing environmental conditions at or around the Stimson  
18 Bonner Mill Property.

## 19 XI.

### 20 RECORD RETENTION

21 93. Until ten years after Stimson's receipt of DEQ's notification pursuant to Section  
22 XXX (Notice of Completion of Work and Boundary Location), Stimson shall preserve and retain  
23 all non-identical copies of records and documents (including records or documents in electronic  
24 form) now in its possession or control or which come into its possession or control that relate in

1 any manner to the performance of the Work or the liability of any person under CECRA or  
2 CERCLA with respect to the Stimson Bonner Mill Property, regardless of any corporate  
3 retention policy to the contrary. Until ten years after Stimson's receipt of DEQ's notification  
4 pursuant to Section XXX (Notice of Completion of Work and Boundary Location), Stimson shall  
5 also instruct its contractors and agents to preserve all documents, records, and information of  
6 whatever kind, nature or description relating to performance of the Work.

7 94. At the conclusion of this document retention period, Stimson shall notify DEQ at  
8 least ninety days prior to the destruction of any such records or documents, and, upon request by  
9 DEQ, Stimson shall agree to retain any such records or deliver any such records or documents to  
10 DEQ. Stimson may assert that certain documents, records and other information are privileged  
11 under the attorney-client privilege or other privilege recognized by Montana law. If Stimson  
12 asserts such a privilege, it shall provide DEQ with the following: (1) the title of the document,  
13 record, or information; (2) the date of the document, record, or information; (3) the name and  
14 title of the author of the document, record, or information; (4) the name and title of each  
15 addressee and recipient; (5) a description of the subject of the document, record, or information;  
16 and (6) the privilege asserted by Stimson. However, no documents, reports or other information  
17 created or generated pursuant to the requirements of this AOC shall be withheld on the grounds  
18 that they are privileged.

19 95. Stimson hereby certifies that to the best of its knowledge and belief, after  
20 thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any  
21 records, documents or other information (other than identical copies) relating to its potential  
22 liability regarding the Stimson Bonner Mill Property since notification of potential liability by  
23 DEQ.

24

1 XII.

2 COMPLIANCE WITH OTHER LAWS

3 96. Stimson shall perform all actions required pursuant to this AOC in accordance  
4 with all applicable local, state and federal laws and regulations, including but not limited to  
5 Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 USC § 2605, and the PCB  
6 Regulations at 40 CFR 761.61(c). In accordance with § 75-10-721, MCA, and Section 121 of  
7 CERCLA, 42 USC § 9621, all actions required pursuant to this AOC shall attain applicable or  
8 relevant (and appropriate) state and federal environmental requirements, criteria or limitations  
9 (ERCLs or ARARs) as determined by DEQ, as well as any existing or future required permits.  
10 Stimson will promptly apply for and diligently pursue any new permits or modifications of  
11 existing permits required for the performance of the Work.

12 XIII.

13 EMERGENCY RESPONSE AND NOTIFICATION

14 97. In the event of any action or occurrence during performance of the Work that  
15 causes or threatens a release that constitutes an emergency situation or may present an immediate  
16 threat to public health, safety, or welfare or the environment, Stimson shall immediately take all  
17 appropriate action. Stimson shall take these actions in accordance with all applicable provisions  
18 of this AOC in order to prevent, abate or minimize such release or endangerment caused or  
19 threatened by the release. Stimson shall also immediately notify DEQ's and DOJ's Project  
20 Coordinators or, in the event of their unavailability, their respective supervisors at the addresses  
21 stated above in Section VII. In the event that Stimson fails to take appropriate action as required  
22 by this paragraph, and DEQ takes such action instead, Stimson shall reimburse DEQ for all costs  
23 of the remedial action pursuant to Section XV (Reimbursement of Costs).

1 98. In addition, in the event of any new release of a hazardous or deleterious  
2 substance from the Stimson Bonner Mill Property, Stimson shall notify DEQ's Project  
3 Coordinator and the National Response Center at (800) 424-8802 within twenty-four hours.  
4 Stimson shall submit a written report to DEQ within seven days after each release, setting forth  
5 the events that occurred and the measures taken or to be taken to mitigate any release or  
6 endangerment caused or threatened by the release and to prevent the reoccurrence of such a  
7 release. This reporting requirement is in addition to, and not in lieu of, reporting under Section  
8 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and  
9 Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

10 99. Stimson shall immediately notify DEQ's Project Coordinator verbally if site  
11 conditions change in a manner that would affect the Work Plan, including, but not limited to,  
12 damage to a monitoring well. Stimson shall follow up with written notice to the Project  
13 Coordinator within seven days of such occurrence.

14 XIV.

15 AUTHORITY OF DEQ PROJECT COORDINATOR

16 100. The DEQ Project Coordinator shall be responsible for overseeing Stimson's  
17 implementation of this AOC. The DEQ Project Coordinator shall have all authorities provided  
18 in this AOC and CECRA, including the authority to halt, conduct, or direct any Work required  
19 by this AOC, or to direct any other action related to this AOC. Absence of the DEQ Project  
20 Coordinator from the project site shall not be cause for stoppage of work unless specifically  
21 directed by the DEQ Project Coordinator.

1 XV.

2 REIMBURSEMENT OF COSTS

3 101. In lieu of payment of past remedial action costs, as defined in § 75-10-701(23),  
4 MCA, incurred by DEQ relating to the Cooling Pond Area through December 18, 2009, Stimson  
5 agrees to transfer to DEQ, subject to certain due diligence and suitability determinations by DEQ  
6 ("the Suitability Determination"), certain real property currently owned by Stimson and located  
7 north of Highway 279 in Section 35, Township 15N, Range 07W, near Lincoln, Montana (the  
8 "Lincoln Property"). The Lincoln Property would be used by DEQ as part of remedial action to  
9 be conducted by DEQ for the Upper Blackfoot Mining Complex-Mike Horse Mine Site near  
10 Lincoln. Assuming an appraisal of the Lincoln Property shows a value in the range of \$300,000  
11 or more, Stimson will also receive a credit in the amount of \$28,000 toward remedial action costs  
12 incurred by DEQ after December 18, 2009. Subject to application of this credit, remedial action  
13 costs incurred after December 18, 2009, will be recoverable by DEQ as future remedial action  
14 costs, as described below. In the event the Lincoln Property is not transferred as described  
15 above, no credit will be given and Stimson will pay the past remedial action costs incurred by  
16 DEQ through December 18, 2009, as previously documented by DEQ, within 30 days of the  
17 latter of the: (1) Effective Date, or (2) the date of a "Suitability Determination" determining the  
18 Lincoln Property is not suitable. The parties may modify the terms of this paragraph by mutual  
19 written agreement.

20 102. Stimson shall pay DEQ all future remedial action costs, as defined in § 75-10-  
21 701(23), MCA, incurred by DEQ after December 18, 2009, attributable to or associated with the  
22 Work. These costs shall include, but are not limited to, any costs incurred by DEQ, costs  
23 incurred by contractor(s) for the State, and all costs incurred under, or in connection with the  
24 drafting, negotiation and execution of this AOC. On a periodic basis, DEQ will send Stimson

1 bills requiring payment that include a cost summary of direct and indirect costs incurred. After  
2 application of the credit described in Paragraph 101, Stimson agrees to reimburse DEQ within  
3 thirty days of receipt of each such accounting.

4 103. Stimson shall make all payments to DEQ by check or electronic funds transfer.

5 Checks shall be made payable to DEQ and sent to:

6 Montana Department of Environmental Quality  
7 Office of Financial Services  
8 Attn: Stimson Cooling Pond Account  
9 P.O. Box 200901  
10 Helena, MT 59620-0901

11 Stimson shall contact DEQ for information on electronic funds transfer if payment will be made  
12 by electronic funds transfer. All payments shall be accompanied by information identifying the  
13 name and address of the party making payment, and shall specify that the payment is to be  
14 applied to the Stimson Cooling Pond Removal Action.

15 104. In the event that payments for remedial action costs are not made within thirty  
16 days of Stimson's receipt of a bill, Stimson shall pay interest on the unpaid balance in  
17 accordance with § 75-10-722, MCA. The interest on remedial action costs shall begin to accrue  
18 30 days after receipt of the bill by Stimson and shall continue to accrue until the date of payment.  
19 Payments of interest made under this paragraph shall be in addition to such other remedies or  
20 sanctions available to DEQ by virtue of Stimson's failure to make timely payments under this  
21 section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

22 105. Stimson may contest payment of any remedial action costs billed under this  
23 Section XV if it determines that DEQ has made a mathematical error, or if it believes DEQ  
24 incurred costs that are not within the definition of remedial action costs found at § 75-10-  
701(23), MCA, or are not associated with the Work. Such objection shall be made in writing  
within ten days of receipt of the bill and must be sent to the DEQ Project Coordinator and copied

1 to Denise Martin, DEQ Site Response Section Manager, at the same address. Any such  
2 objection shall specifically identify the contested remedial action costs and the basis for  
3 objection. In the event of an objection, Stimson shall within the thirty-day period pay all  
4 uncontested remedial action costs to DEQ in the manner described in this Section XV.  
5 Simultaneously, Stimson shall establish an interest-bearing escrow account in a federally-insured  
6 bank duly chartered in the State of Montana and remit to that escrow account funds equivalent to  
7 the amount of the contested remedial action costs.

8       106. Stimson shall send to the DEQ Project Coordinator and the DEQ Site Response  
9 Section Manager a copy of the transmittal letter and check paying the uncontested remedial  
10 action costs, and a copy of the correspondence that establishes and funds the escrow account,  
11 including, but not limited to, information containing the identity of the bank and bank account  
12 under which the escrow account is established as well as a bank statement showing the initial  
13 balance of the escrow account. Simultaneously with establishment of the escrow account,  
14 Stimson shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution).

15       107. If DEQ prevails in the dispute, within five days of the resolution of the dispute,  
16 Stimson shall pay the sums due (with accrued interest, in accordance with § 75-10-722, MCA) to  
17 DEQ in the manner described in this Section XV. If Stimson prevails concerning any aspect of  
18 the contested costs, Stimson shall pay that portion of the costs (plus associated accrued interest,  
19 in accordance with § 75-10-722, MCA) for which it did not prevail to DEQ in the manner  
20 described in this Section XV. After such payment, Stimson shall be disbursed any balance of the  
21 escrow account. The dispute resolution procedures set forth in this paragraph in conjunction  
22 with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive  
23 mechanisms for resolving disputes regarding Stimson's obligation to reimburse DEQ for  
24 remedial action costs.



1 111. Any agreement reached by the Parties pursuant to this section shall be in writing  
2 and shall, upon signature by the Parties, be incorporated into and become an enforceable part of  
3 this AOC.

4 112. If the Parties are unable to reach an agreement within the Negotiation Period,  
5 within ten days thereafter, the Parties shall submit a statement of the relevant facts constituting  
6 the dispute, no more than three pages in length, to the Director of DEQ, or to the Attorney  
7 General with respect to disputes involving Boundary Location. The Director of DEQ, or the  
8 Attorney General for disputes involving Boundary Location, upon his/her sole discretion, may  
9 hold a meeting with the Parties. The Director of DEQ, or the Attorney General for disputes  
10 involving Boundary Location, will issue a written decision on the dispute and the decision shall  
11 be incorporated into and become an enforceable part of this AOC. Stimson's obligations under  
12 this AOC shall not be tolled by submission of any objection for dispute resolution under this  
13 section. Following resolution of the dispute, as provided by this section, Stimson shall fulfill the  
14 requirement that was the subject of the dispute in accordance with the agreement reached or with  
15 the Director's or Attorney General's decision, whichever occurs. Such final written decisions of  
16 the Director of DEQ or the Attorney General are not subject to judicial appeal.

17 XVII.

18 FORCE MAJEURE

19 113. Stimson agrees to perform all requirements of this AOC within the time limits  
20 established under this AOC, unless the performance is delayed by *force majeure*. As used  
21 herein, a "*force majeure*" shall consist of an event arising from causes beyond the control of  
22 Stimson, and beyond the control of any entity controlled by or associated with Stimson,  
23 including but not limited to its contractors and subcontractors, that delays or prevents  
24 performance of any obligation under this AOC despite Stimson's best efforts to fulfill the

1 obligation. The requirement that Stimson use “best efforts to fulfill the obligation” includes  
2 using best efforts to anticipate any potential *force majeure* event and best efforts to address the  
3 effects of any potential *force majeure* event (a) as it is occurring and (b) following the *force*  
4 *majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure*  
5 events might include delays or failures of governmental agencies in issuing necessary permits or  
6 approvals, provided that Stimson has timely submitted complete applications and provided all  
7 requested information. *Force majeure* does not include financial inability to complete the Work,  
8 increased cost of performance, or normal precipitation events.

9       114. If any event occurs or has occurred that may delay the performance of any  
10 obligation under this AOC, whether or not caused by a *force majeure* event, Stimson shall notify  
11 DEQ and DOJ verbally within twenty-four hours of when Stimson first knows that the event  
12 might cause a delay. Within three days thereafter, Stimson shall provide to DEQ and DOJ in  
13 writing an explanation and description of the reasons for the delay; the anticipated duration of  
14 the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for  
15 implementation of any measures to be taken to prevent or mitigate the delay or the effect of the  
16 delay; Stimson’s rationale for attributing such delay to a *force majeure* event if it intends to  
17 assert such a claim; and a statement as to whether, in the opinion of Stimson, such event may  
18 cause or contribute to an endangerment to public health, welfare or safety, or the environment.  
19 Failure to comply with the above requirements shall preclude Stimson from asserting any claim  
20 of *force majeure* for that event for the period of time of such failure to comply and for any  
21 additional delay caused by such failure.

22       115. Stimson shall bear the burden of proving by clear and convincing evidence that  
23 any failure to comply with the requirements of this AOC or of Approved work plans or  
24 submittals is due to *force majeure*.

1 116. If DEQ agrees that the delay or anticipated delay is attributable to a *force majeure*  
2 event, the time for performance of the obligations under this AOC that are affected by the *force*  
3 *majeure* event will be extended by DEQ for such time as is necessary to complete those  
4 obligations. An extension of the time for performance of the obligations affected by the *force*  
5 *majeure* event shall not, of itself, extend the time for performance of any other obligation. If  
6 DEQ does not agree that the delay or anticipated delay has been or will be caused by a *force*  
7 *majeure* event, DEQ will notify Stimson in writing of its decision. If DEQ agrees that the delay  
8 is attributable to a *force majeure* event, DEQ will notify Stimson in writing of the length of the  
9 extension, if any, for performance of the obligations affected by the *force majeure* event.

10 XVIII.

11 STIPULATED PENALTIES

12 117. Stimson shall be liable to DEQ for stipulated penalties in the amounts set forth in  
13 this Section XVIII for failure to comply with the requirements of this AOC, unless excused  
14 under Section XVII (Force Majeure). “Compliance” by Stimson shall include completion of all  
15 activities required by this AOC in accordance with all applicable requirements of law and this  
16 AOC, within the specified time schedules established by and Approved under this AOC, as well  
17 as submission of documents within the specified time schedules established by and Approved  
18 under this AOC, and payment of DEQ’s remedial action costs as specified in Section XV  
19 (Reimbursement of Costs).

20 118. Stipulated Penalty Amounts

21 A. In the event that Stimson violates the provisions of this AOC, DEQ may assess, and,  
22 if so, Stimson shall pay, by tendering to DEQ within ten days of Stimson’s receipt of  
23 a written demand from DEQ for payment of such penalties, the sum(s) set forth below  
24 as stipulated penalties for each stipulated penalty event. Stipulated penalties may be

1 assessed for each day during which such violation, delay, or failure occurs or  
2 continues, including weekends or holidays. The demand shall specify the events  
3 giving rise to Stimson's asserted liability for stipulated penalties and the amount of  
4 such penalties.

5 B. The following stipulated penalties shall accrue per violation per day for any  
6 noncompliance:

<u>Days of Violation</u>	<u>Amount/Day</u>
1-3 Days	\$ 500
4-7 Days	\$ 1,000
8-30 Days	\$ 2,500
31 or more Days	\$ 5,000

12 C. All penalties shall begin to accrue on the day after the complete performance is due or  
13 the day a violation occurs, and shall continue to accrue through the final day of the  
14 correction of the noncompliance or completion of the activity. Nothing in this AOC  
15 shall prevent the simultaneous accrual of stipulated penalties for separate violations  
16 of this AOC. Following DEQ's determination that Stimson failed to comply with a  
17 requirement of this AOC, DEQ may give Stimson written notification of the failure  
18 and describe the noncompliance. DEQ may send Stimson a written demand for  
19 payment of the penalties. However, penalties shall accrue as provided herein  
20 regardless of whether DEQ has notified Stimson of a violation.

21 D. All penalties accruing under this section shall be due and payable to DEQ within ten  
22 days of Stimson's receipt from DEQ of a demand for payment of the penalties, unless  
23 Stimson invokes the dispute resolution procedures under Section XVI (Dispute  
24 Resolution). All payments to DEQ under this section shall be paid according to the

1 procedures outlined in Section XV (Reimbursement of Costs), and shall indicate that  
2 the payment is for stipulated penalties.

3 E. Copies of check(s) paid pursuant to this section, and accompanying transmittal  
4 letter(s), shall be sent to DEQ's Project Coordinator and to:

5 Bill Kirley  
6 Chief Remediation Counsel  
7 Montana Department of Environmental Quality  
8 P.O. Box 200901  
9 Helena, MT 59620-0901.

10 F. The payment of penalties shall not alter in any way Stimson's obligation to complete  
11 performance of the Work required under this AOC.

12 G. Penalties shall continue to accrue during any dispute resolution period, but need not  
13 be paid until ten days after the dispute is resolved by agreement or by receipt of  
14 DEQ's decision.

15 H. If Stimson fails to pay stipulated penalties when due, DEQ may institute proceedings  
16 to collect the penalties, as well as interest. Stimson shall pay interest on the unpaid  
17 balance, which shall begin to accrue on the date of demand made pursuant to this  
18 Section. Nothing in this AOC shall be construed as prohibiting, altering, or in any  
19 way limiting the ability of DEQ to seek any other remedies or sanctions available by  
20 virtue of Stimson's violation of this AOC or of the statutes and regulations upon  
21 which it is based, including, but not limited to, penalties pursuant to §§ 75-10-711,  
22 714 and 715, MCA. However, DEQ shall not seek civil penalties pursuant to §§ 75-  
23 10-711, 714 and 715, MCA, for any violation for which a stipulated penalty is  
24 provided in this section, except in the case of a willful violation of this AOC.

Notwithstanding any other provision of this section, DEQ may, in its unreviewable

1 discretion, waive any portion of stipulated penalties that have accrued pursuant to this  
2 AOC.

3 I. DEQ hereby finds that the provisions of this AOC, including this Section XVIII, are  
4 designed to protect the public health, welfare and safety and environment by  
5 achieving a prompt, complete and efficient remediation of the Cooling Pond, Berm,  
6 and contaminated materials in the Cooling Pond Area. These stipulated penalties  
7 provisions are integral and essential to the Parties' desire that the provisions of this  
8 AOC be, to the maximum extent achievable, self-executing and self-enforcing.

9 XIX.

10 BOUNDARY LOCATION AND DISMISSAL OF LAWSUIT

11 118. After such time as Stimson has completed the Work, including the removal of the  
12 Berm, Cooling Pond, and contaminated materials in the Cooling Pond Area and reconstruction of  
13 the floodplain at or near its natural location, Stimson shall become responsible for the Boundary  
14 Location, the elements of which must be approved by DOJ. Stimson shall have the ordinary high  
15 water mark of the Blackfoot River, along the portion of the Stimson Bonner Mill Property at  
16 which the Berm, Cooling Pond, and fire pond lagoon had previously been located, surveyed in  
17 accordance with the requirements of Montana law providing for surveys to be recorded with the  
18 County Recorder as divisions of land. This survey, once it has been approved by DOJ, shall then  
19 be filed with the Missoula County Recorder's Office as an amendment to Certificate of Survey  
20 No. 6099 of Tracts A and B of the Stimson Bonner Mill Property. It is agreed that this boundary,  
21 as shown on this survey, shall be the boundary of the Stimson Bonner Mill Property along such  
22 portions of this property. It is further recognized that this boundary may shift in the future with a  
23 shifting of the natural ordinary high water mark of the Blackfoot River.



1 XXI.

2 RESERVATION OF RIGHTS BY DEQ AND DOJ

3 121. Except as specifically provided in this AOC, nothing in this AOC shall limit the  
4 power and authority of DEQ and DOJ to take, direct, or order all actions necessary to protect  
5 public health, welfare, or safety, or the environment or to prevent, abate, or minimize an actual  
6 or threatened release of hazardous or deleterious substances, pollutants or contaminants, or  
7 hazardous or solid waste on, at, or from the Stimson Bonner Mill Property. Further, nothing in  
8 this AOC shall prevent DEQ or DOJ from seeking legal or equitable relief to enforce the terms  
9 of this AOC or, except as specifically provided in this AOC, from taking other legal or equitable  
10 action as it deems appropriate and necessary or from requiring Stimson in the future to perform  
11 additional activities pursuant to WQA, CECRA, or any other applicable law.

12 122. Nothing in this AOC precludes DEQ or DOJ from asserting any claims, causes of  
13 action, or demands against any persons not Parties to this AOC. Nothing herein diminishes the  
14 right of DEQ or DOJ to pursue any such persons to obtain additional remedial action costs or  
15 remedial action, or to enter into settlements providing contribution protection to such parties,  
16 including claims DEQ may have under § 75-10-719(2), MCA, or Section 107 of CERCLA, 42  
17 USC § 9607.

18 123. The covenant not to sue set forth in Section XX above does not pertain to any  
19 matters other than those expressly identified therein. DEQ and DOJ reserve, and this AOC is  
20 without prejudice to, all rights against Stimson with respect to all other matters, including, but  
21 not limited to:

- 22 A. Liability for performance of any remedial action other than the Work;  
23 B. Criminal liability;

1 C. Liability arising from the past, present, or future disposal, release or threat of release  
2 of hazardous or deleterious substances outside of the Cooling Pond, Berm, and  
3 Cooling Pond Area;

4 D. Liability for violations of, or non-compliance with, any applicable laws, including  
5 permit requirements, except for any such violations enumerated in Section V above.  
6 (In addition, DEQ will accept performance of the Work hereunder as meeting the  
7 intent of the requirements of Part I.E.1 of Montana Pollutant Elimination System  
8 (MPDES) Permit MT0000205, and DEQ hereby waives any claims for violations of  
9 or non-compliance with Part I.E.1 of MPDES Permit MT0000205, conditioned upon  
10 the complete and satisfactory performance by Stimson of all obligations under this  
11 AOC.)

12 124. Work Takeover.

13 In the event DEQ, or DOJ in the case of the Boundary Location, determines that Stimson  
14 has ceased implementation of any portion of the Work or Boundary Location, is seriously or  
15 repeatedly deficient or late in its performance of the Work or Boundary Location, or is  
16 implementing the Work or Boundary Location in a manner which may cause an endangerment to  
17 public health, safety or welfare or the environment, DEQ may assume the performance of all or  
18 any portion of the Work or Boundary Location as DEQ determines necessary. Stimson may  
19 invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute DEQ's or DOJ's  
20 determination that takeover of the Work or Boundary Location is warranted under this  
21 paragraph. Costs incurred by DEQ in performing the Work or Boundary Location pursuant to  
22 this paragraph shall be considered remedial action costs that Stimson shall pay pursuant to  
23 Section XV (Reimbursement of Costs). If Stimson fails to pay DEQ's costs incurred pursuant to  
24 this paragraph as required by Section XV (Reimbursement of Costs), DEQ may also utilize

1 Stimson’s financial assurance provided in accordance with Section XXVII. Notwithstanding any  
2 other provision of this AOC, DEQ retains all authority and reserves all rights to take any and all  
3 remedial actions authorized by law.

4 XXII.

5 COVENANT NOT TO SUE BY STIMSON LUMBER COMPANY

6 125. Stimson covenants not to sue and agrees not to assert any and all direct or indirect  
7 claims or causes of action against the State of Montana, or its departments, agencies,  
8 instrumentalities, officials, agents, contractors, subcontractors, employees and representatives,  
9 arising out of or related to the Work, remedial action costs, or this AOC, including, but not  
10 limited to:

- 11 A. Any claim under Federal, State or local statutory or common law;
- 12 B. Any claim related to any lawsuits involving a third party, including, but not limited  
13 to, contribution claims, motions for joinder and third-party claims;
- 14 C. Any direct or indirect claim for reimbursement from the Environmental Quality  
15 Protection Fund established in § 75-10-704, MCA, the Orphan Share Account  
16 established in § 75-10-743, MCA, or the federal Hazardous Substances Superfund;  
17 and
- 18 D. Claims based on DEQ’s or DOJ’s oversight of the Work under WQA, CECRA,  
19 CERCLA, or any other provision of law.

20 126. Further, Stimson covenants and agrees not to interfere with or adversely affect the  
21 implementation, integrity, or protectiveness of any remedial actions at the Stimson Bonner Mill  
22 Property.

1 XXIII.

2 OTHER CLAIMS

3 127. By issuance of this AOC, the State of Montana assumes no liability for injuries or  
4 damages to persons or property resulting from any acts or omissions of Stimson. The State shall  
5 not be deemed a party to any contract entered into by Stimson or its directors, officers,  
6 employees, agents, successors, representatives, assigns, contractors, or consultants in carrying  
7 out actions pursuant to this AOC.

8 128. Nothing in this AOC constitutes a satisfaction of or release from any claim or  
9 cause of action against any person not a party to this AOC, for any liability such person may  
10 have under CECRA, CERCLA, WQA, other statutes, or common law, including but not limited  
11 to any claims of DEQ for costs, damages and interest under CECRA, CERCLA, or WQA.

12 129. No action or decision by DEQ or DOJ pursuant to this AOC shall give rise to any  
13 right to judicial review.

14 XXIV.

15 CONTRIBUTION PROTECTION

16 130. The Parties agree that Stimson is entitled, as of the Effective Date, to protection  
17 from contribution actions or claims as provided by § 75-10-719(1), MCA, and CERCLA  
18 Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for “matters addressed” in this AOC. The “matters  
19 addressed” in this AOC are the Work, the Boundary Location, payment of past remedial action  
20 costs related to the Cooling Pond, the Berm, or the Cooling Pond Area and payment of future  
21 remedial action costs related to the Work and the Boundary Location.

1 XXV.

2 INDEMNIFICATION

3 131. Stimson shall indemnify, save and hold harmless the State of Montana, its  
4 departments, agencies, instrumentalities, officials, agents, contractors, subcontractors, employees  
5 and representatives from any and all claims or causes of action arising from, or on account of,  
6 negligent or other wrongful acts or omissions of Stimson, its officers, directors, employees,  
7 agents, contractors, or subcontractors, in carrying out actions pursuant to this AOC. This  
8 indemnification shall specifically include any third-party complaint against or joinder of the  
9 State of Montana to an action between Stimson and a third party. In addition, Stimson agrees to  
10 pay the State of Montana all costs incurred by the State of Montana, including but not limited to  
11 reasonable attorneys' fees and other expenses of litigation and settlement, arising from or on  
12 account of claims made against the State of Montana based on negligent or other wrongful acts  
13 or omissions of Stimson, its officers, directors, employees, agents, contractors, subcontractors  
14 and any persons acting on its behalf or under its control, in carrying out activities pursuant to this  
15 AOC. The State of Montana shall not be held out as a party to any contract entered into by or on  
16 behalf of Stimson in carrying out activities pursuant to this AOC. Neither Stimson nor any of its  
17 officers, directors, employees, agents, contractors, subcontractors and any persons acting on its  
18 behalf or under its control shall be considered an agent of the State of Montana.

19 132. The State of Montana shall give Stimson notice of any claim for which the State  
20 of Montana plans to seek indemnification pursuant to this section and shall consult with Stimson  
21 prior to settling such claim.

22 133. Stimson waives all claims against the State of Montana for damages or  
23 reimbursement or for set-off of any payments made or to be made to the State of Montana,  
24 arising from or on account of any contract, agreement, or arrangement between Stimson and any

1 person for performance of Work or Boundary Location under or relating to this AOC, including,  
2 but not limited to, claims on account of construction delays. In addition, Stimson shall  
3 indemnify and hold harmless the State of Montana with respect to any and all claims for  
4 damages or reimbursement arising from or on account of any contract, agreement, or  
5 arrangement between Stimson and any person for performance of Work under or relating to this  
6 AOC, including, but not limited to, claims on account of construction delays.

7 XXVI.

8 INSURANCE

9 134. At least ten days prior to commencing any Work under this AOC, Stimson shall  
10 secure, and shall maintain for the duration of this AOC, comprehensive general liability  
11 insurance and pollution liability insurance both with limits of \$3 million, combined single limit,  
12 and automobile insurance with limits of \$1 million, combined single limit, naming the State of  
13 Montana as an additional insured. Within the same time period, Stimson shall provide DEQ with  
14 certificates of such insurance and a copy of each insurance policy. Stimson shall submit such  
15 certificates and copies of policies each year on the anniversary of the Effective Date. In addition,  
16 for the duration of this AOC, Stimson shall satisfy, or shall contractually require that their  
17 contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision  
18 of worker's compensation insurance for all persons performing the Work and Boundary Location  
19 on behalf of Stimson in furtherance of this AOC. If Stimson demonstrates by evidence  
20 satisfactory to DEQ that any contractor or subcontractor maintains insurance equivalent to that  
21 described above, or insurance covering some or all of the same risks but in an equal or lesser  
22 amount, then Stimson need provide only that portion of the insurance described above which is  
23 not maintained by such contractor or subcontractor.

24

1 XXVII.

2 FINANCIAL ASSURANCE

3 135. Pursuant to § 75-10-719(9), MCA, within thirty days of the Effective Date,  
4 Stimson shall establish and maintain financial assurance for the benefit of DEQ and DOJ in the  
5 amount of \$6.5 million. For its financial assurance, Stimson shall provide DEQ a financial  
6 assurance bond in the amount of \$6.5 million from Safeco's Insurance Company of America or  
7 another surety reasonably acceptable to DEQ. The bond shall provide that if the Work is not  
8 completed by Stimson, upon notification by DEQ, the surety shall pay DEQ for completion of  
9 the Work up to the amount of the bond (initially \$6.5 million). Alternatively, Stimson may  
10 provide DEQ an irrevocable letter of credit issued by Bank of America, N.A., or another  
11 institution reasonably acceptable to DEQ in the amount of \$6.5 million. The letter of credit shall  
12 provide that the issuer will pay under the letter of credit upon notification by DEQ, as provided  
13 in the letter of credit, that Stimson has failed to perform as per the terms of this AOC.

14 136. This financial assurance is necessary to secure the full and final completion of the  
15 Work and Boundary Location by Stimson, including, but not limited to, in the event of Stimson's  
16 dissolution or bankruptcy. The financial assurance provided pursuant to this section must be in  
17 form and substance satisfactory to DEQ, determined in DEQ's sole discretion.

18 137. If at any time DEQ notifies Stimson that the anticipated cost of completing the  
19 Work or Boundary Location has increased, Stimson shall, within thirty days of receipt of notice  
20 of DEQ's determination, provide additional financial assurance as outlined in Paragraph 135,  
21 above, reflecting such cost increase. In addition, in the event that DEQ determines at any time  
22 that the financial assurance provided pursuant to this section (including, without limitation, the  
23 instrument(s) evidencing such assurance) is inadequate, then, within thirty days of such  
24 notification, Stimson shall obtain and present to DEQ for Approval additional financial

1 assurance or a revised form of financial assurance that is acceptable to DEQ in form, substance  
2 and amount. In the event of a dispute over the increased amount or revised form of financial  
3 assurance, Stimson may seek dispute resolution pursuant to Section XVI (Dispute Resolution).  
4 Stimson's inability to demonstrate financial ability to complete the Work shall in no way excuse  
5 performance of any activities required under this AOC.

6 138. If, after the Effective Date, Stimson can show that the estimated cost to complete  
7 the remaining Work and Boundary Location has diminished below the amount set forth in  
8 Paragraph 135 of this section, Stimson may propose a reduction in the amount of the financial  
9 assurance provided under this section to the estimated cost of the remaining Work and Boundary  
10 Location to be performed. Stimson shall submit a proposal for such reduction to DEQ (or, with  
11 respect to the costs for the Boundary Location, DOJ), and DEQ (or with respect to the costs for  
12 the Boundary Location, DOJ) shall respond within ten days of receipt of such proposal. Stimson  
13 may reduce the amount of the financial assurance after receiving written Approval from DEQ  
14 (or, with respect to the costs for the Boundary Location, DOJ). In the event of a dispute, Stimson  
15 may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Stimson may reduce  
16 the amount of financial assurance in accordance with DEQ's (or, with respect to the costs for the  
17 Boundary Location, DOJ's) written decision resolving the dispute.

## 18 XXVIII.

### 19 MODIFICATIONS

20 139. The DEQ Project Coordinator, after consultation with the DOJ Project  
21 Coordinator, may make modifications to any plan or schedule in writing or by oral direction.  
22 Any oral modification is not binding until it is promptly memorialized in writing by DEQ but  
23 shall have as its effective date the date of the DEQ Project Coordinator's oral direction. Any  
24 other requirements of this AOC may be modified in writing by mutual agreement of the Parties.

1 140. If Stimson seeks permission to deviate from any Approved Work Plan or  
2 schedule, Stimson's Project Coordinator shall submit a written request to DEQ for Approval  
3 outlining the proposed modification and its basis. Stimson may not proceed with the requested  
4 deviation until receiving written Approval from the DEQ Project Coordinator, which may be  
5 given only after consultation with the DOJ Project Coordinator.

6 141. No informal advice, guidance, suggestion, or comment by the DEQ Project  
7 Coordinator or other State of Montana representatives regarding reports, plans, specifications,  
8 schedules, or any other writing submitted by Stimson shall relieve Stimson of its obligation to  
9 obtain any formal Approval required by this AOC, or to comply with all requirements of this  
10 AOC, unless it is formally modified.

11 XXIX.

12 ADDITIONAL WORK

13 142. If DEQ determines that additional remedial actions not included in the Work Plan  
14 or other Approved plans are necessary to protect public health, welfare, or safety, or the  
15 environment, DEQ will notify Stimson of that determination. Unless otherwise stated by DEQ,  
16 within thirty days of receipt of notice from DEQ that additional remedial actions are necessary to  
17 protect public health, welfare, or safety, or the environment, Stimson may submit a work plan for  
18 the additional remedial actions to DEQ for Approval, conforming to the applicable requirements  
19 of Section VIII (Work to Be Performed) of this AOC. Upon DEQ's Approval of any plan  
20 pursuant to Section VIII, the plan shall become incorporated into this AOC. Stimson shall  
21 implement the plan for additional remedial actions in accordance with the provisions and  
22 schedule contained therein. This section does not alter or diminish the DEQ Project  
23 Coordinator's authority to make modifications to any plan or schedule pursuant to Section  
24 XXVIII (Modifications). If Stimson does not submit a Work Plan for any additional remedial

1 actions, such remedial actions shall not be carried out pursuant to the terms of this AOC but  
2 DEQ shall have and hereby reserves, notwithstanding any other provision of this AOC, including  
3 without limitation, Section XX (Covenant Not to Sue by DEQ), all applicable legal authorities  
4 and claims against Stimson with respect to such work.

5 XXX.

6 NOTICE OF COMPLETION OF WORK AND BOUNDARY LOCATION

7 143. When DEQ determines, after its review of the final report, as outlined in  
8 Paragraph 82 (Final Report), that all Work has been fully performed in accordance with this  
9 AOC, with the exception of any continuing obligations required by this AOC, including payment  
10 of remedial action costs in accordance with Section XV and Section XI (Record Retention), and  
11 DOJ determines that the Boundary Location has been fully performed, DEQ and DOJ will jointly  
12 provide written notice to Stimson.

13 144. If DEQ, or DOJ with respect to the Boundary Location, determines that any such  
14 Work or Boundary Location has not been completed in accordance with this AOC, DEQ (or  
15 DOJ) will notify Stimson, provide a list of the deficiencies, and may require that Stimson modify  
16 the Work Plan or the Boundary Location within a defined period of time in order to correct such  
17 deficiencies. Stimson shall implement the modified and Approved Work Plan or Boundary  
18 Location within a period of time specified by DEQ (or DOJ) and shall submit a modified final  
19 report in accordance with Paragraph 82 (Final Report). Failure by Stimson to implement the  
20 Approved modified Work Plan shall be a violation of this AOC, subject to stipulated penalties.

21 XXXI.

22 INTEGRATION/APPENDICES

23 145. This AOC and its attachments constitute the final, complete and exclusive  
24 agreement and understanding among the Parties with respect to the settlement embodied in this

1 AOC. The Parties acknowledge that there are no representations, agreements or understandings  
2 relating to the settlement other than those expressly contained in this AOC and as referenced in  
3 Paragraph 101. The following attachments are attached to and incorporated into this AOC:  
4 Attachments A (Work Plan), B (Action Memo), and C (Concurrence of Buyer).

5 XXXII.

6 TERMINATION AND SATISFACTION

7 146. This AOC shall terminate when Stimson certifies that all activities required under  
8 this AOC have been performed (the Certification), and DEQ has Approved the Certification and  
9 DOJ has approved the Certification with respect to the Boundary Location. DEQ, and DOJ as to  
10 the Boundary Location, shall Approve or disapprove the Certification within six months of  
11 Stimson's submittal of the Certification. Sections I (Jurisdiction and General Provisions), XI  
12 (Record Retention), XV (Reimbursement of Costs), XX (Covenant Not to Sue by DEQ), XXI  
13 (Reservation of Rights by DEQ and DOJ), XXII (Covenant Not to Sue by Stimson), XXIII  
14 (Other Claims), XXIV (Contribution Protection), XXV (Indemnification), XXXII (Termination  
15 and Satisfaction), and XXXIII (Admissibility of Data) shall survive termination of this AOC.  
16 Subject to the reservations set forth in Section XXI, if DEQ Approves the Certification, Stimson  
17 shall not be required to perform any additional Work at the Cooling Pond, Berm, and Cooling  
18 Pond Area unless, subsequent to the Certification:

19 a. Conditions at the Cooling Pond or other areas addressed in the Work Plan,  
20 previously unknown to DEQ, are discovered, or

21 b. New information is received by DEQ, in whole or in part,

22 and those previously unknown conditions or the new information indicates that the remedial  
23 action is not adequate to protect the public health, welfare or safety, or the environment.

1 XXXIII.

2 ADMISSIBILITY OF DATA

3 147. Except as provided herein, Stimson hereby stipulates to the admissibility of and  
4 waives all evidentiary objection(s) to the admissibility of any final data and all reports generated  
5 by Stimson or its contractors pursuant to this AOC in any judicial or administrative proceedings  
6 brought by DEQ or DOJ and arising out of or related to the subject matter of this AOC. For  
7 purposes of this Section XXXIII, the term “final data...generated” means data that has been  
8 verified by the QA/QC procedures Approved under this AOC.

9 XXXIV.

10 EFFECTIVE DATE

11 148. This AOC shall become effective if and when the AOC is signed by DEQ and  
12 DOJ following the notice and public comment period as provided in Section XXXVII below.

13 XXXV.

14 AUTHORITY OF SIGNATORIES

15 149. Each of the signatories of this AOC states that he or she is fully authorized to  
16 enter into the terms and conditions of this AOC and to bind legally the Party represented by him  
17 or her to the AOC.

18 XXXVI.

19 CONCURRENCE OF BUYER

20 150. If Stimson sells all or any portion of the Stimson Bonner Mill Property during the  
21 term of this AOC, Stimson will obtain the signature and concurrence of the buyer(s) as provided  
22 in the form of Concurrence of Buyer presented in Attachment C. DEQ and DOJ may waive such  
23 concurrence if the portion of the property purchased by a particular buyer does not relate to or  
24 affect the Work or the Boundary Location under this AOC.

1 XXXVII.

2 PUBLIC NOTICE AND COMMENT

3 151. Before final approval and signature by DEQ and DOJ, this AOC shall be made  
4 available for public comment in accordance with § 75-10-713, MCA.

5 152. After completion of the notice and comment period described in § 75-10-713,  
6 MCA, the State may withdraw or withhold consent to this AOC or may request changes to the  
7 AOC based on the comment received. If the State requests changes, Stimson may elect to  
8 withdraw its consent. Otherwise, Stimson consents to State approval and the binding  
9 effectiveness of this AOC without further notice.

10  
11 IT IS SO AGREED:

12  
13 STATE OF MONTANA  
14 DEPARTMENT OF ENVIRONMENTAL QUALITY

15 

16 Richard H. Opper, Director

4/19/10

Date

17 APPROVED FOR LEGAL CONTENT

18 

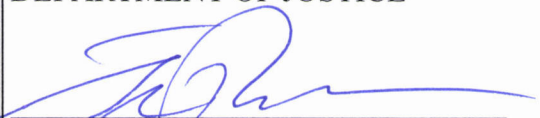
19 William B. Kirley

4-19-10

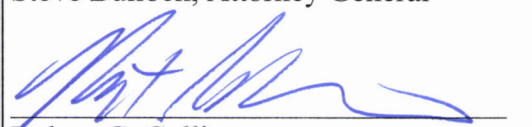
Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF MONTANA  
DEPARTMENT OF JUSTICE


  
\_\_\_\_\_  
Steve Bullock, Attorney General

4/19/10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert G. Collins  
Supervising Assistant Attorney General

April 19, 2010  
\_\_\_\_\_  
Date

STIMSON LUMBER COMPANY

  
\_\_\_\_\_  
Jeff Webber  
Vice-President of Manufacturing

4/15/2010  
\_\_\_\_\_  
Date