IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONTANA POLE AND TREATING PLANT, TORGER L. OAAS, THE ATLANTIC RICHFIELD COMPANY, THE BURLINGTON NORTHERN RAILROAD COMPANY, and INLAND PROPERTIES, INC.,

Defendants.

CONSOLIDATED
Civil Action No.
91-82-BU-PGH

THE BURLINGTON NORTHERN RAILROAD COMPANY,

Crossclaimant,

v.

MONTANA POLE AND TREATING PLANT, TORGER L. OAAS, and THE ATLANTIC RICHFIELD COMPANY.

ATLANTIC RICHFIELD CO.

Plaintiff,

v.

TORGER L. OAAS, T. ERIC OAAS, MARTHA OAAS, MONTANA POLE AND TREATING PLANT, BANK OF MONTANA - BUTTE, RIEDEL ENVIRONMENTAL SERVICES, INC., ROY F. WESTON, INC., BURLINGTON NORTHERN RAILROAD COMPANY,

Defendants.

Civil Action No.
90-75-BU-PGH

BURLINGTON NORTHERN RAILROAD COMPANY

Third Party Plaintiff,

v.

DENNIS R. WASHINGTON, INLAND PROPERTIES, INC.; AND MONTANA RESOURCES, INC.

Third Party Defendants.

CONSENT DECREE

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I. BACKGROUND

A. The Montana Pole and Treating Plant Site (the "Site") is located in Silver Bow County in Butte, Montana. A former wood treating plant owned and operated by members of the Oaas family and Montana Pole and Treating Plant, Inc.("MPTP"), is located on the Site. The plant operated at the Site from approximately 1946 through 1984. MPTP operations and other MPTP related Site activities resulted in the release of hazardous or deleterious substances including, but not limited to, pentachlorophenol ("PCP") and PCP contaminated wood treating oil, into surface and subsurface soils, surface water and ground water at the Site.

B. The United States of America ("United States") asserts that, between 1983 and 1993, in response to a release or substantial threat of release of hazardous substances at or from the Site, the United States Environmental Protection Agency ("EPA") conducted a series of response actions at the Site pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9604, and EPA's removal authority. These actions included, but are not limited to, the excavation and storage of contaminated soils; fencing; construction of groundwater interception, recovery, and treatment systems; and various engineering studies. The United States asserts that EPA contracted with Roy F. Weston, Incorporated ("Weston") and Riedel Environmental Services, Inc. ("Riedel") to assist EPA in

performing some of these response activities, and Weston and Riedel, under the direction and control of EPA, provided these services as response action contractors pursuant to Section 119 of CERCLA, 42 U.S.C. § 9619, and in accordance with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. The United States has estimated that total costs for these response actions conducted by the United States, together with the costs of oversight of the Remedial Investigation and Feasibility Study for the Site ("RI/FS") and other costs through the completion of Remedial Design, will be $11,778,000.00.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Site was listed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987 (52 Fed. Reg. 27623).

D. The United States alleges that in response to a release or a substantial threat of release of hazardous substances at or from the Site, Atlantic Richfield Company ("ARCO"), under an Administrative Order on Consent ("AOC") issued by the State of Montana ("State") Department of Health and Environmental Sciences in 1990, conducted an RI/FS for the Site. The 1993 Record of Decision for the Site states that the RI/FS was performed in accordance with the NCP.

E. The State acknowledges that ARCO paid $69,000.00 to the State to perform natural resource damage assessment activities pursuant to Article XXII of the RI/FS AOC, and ARCO also

reimbursed the State $23,000.00 pursuant to Article XXI of the RI/FS AOC for past response costs incurred by the State up to the date of the RI/FS AOC. ARCO has reported that its estimate of the cost of the RI/FS to ARCO was approximately $5.5 million.

F. The United States, on behalf of EPA, filed a complaint in this matter styled as United States v. MPTP, et al. (CV 91-082-BU-PGH) alleging causes of action pursuant to Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607 and 9613(g)(2), against MPTP, Torger L. Oaas, ARCO, and Burlington Northern Railroad Company ("BNRR") on October 9, 1991. The United States alleged that MPTP and Torger L. Oaas were past and present owners and operators of the Site, and alleged that ARCO and BNRR were past and/or present owners of portions of the Site. On October 24, 1991, technical amendments were made in the United States' First Amended Complaint. On May 25, 1993, the United States, by a Second Amended Complaint, added Inland Properties, Inc. as a defendant in the foregoing action and alleged that Inland Properties, Inc. is a present owner of a portion of the Site.

G. The United States in its complaint, as amended, seeks reimbursement of response costs incurred and to be incurred by the United States for response actions in connection with the release or threatened release of hazardous substances, and a declaration of the named defendants' liability for further response costs at the Site. In its answer to the First Amended

Complaint of the United States dated November 22, 1991, ARCO asserted a claim in recoupment against the United States.

H. On October 25, 1990, ARCO filed a complaint in this Court captioned as ARCO v. Oaas, et al. (CV 90-75-BU-PGH), against MPTP, Torger L. Oaas, T. Eric Oaas, Martha Oaas, and Bank of Montana-Butte which was later amended to add BNRR, Weston, and Riedel as defendants. In response to cross-claims made by Dennis R. Washington, Montana Resources, Inc., and Inland Properties, Inc. (collectively "MRI"), ARCO also filed counter-claims against MRI on September 10, 1992. ARCO alleged, inter alia, that all of these parties are liable to ARCO under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), Mont. Code Ann. §§ 75-10-701 et seq., for contribution and for recovery of response costs in connection with the release or threatened release of hazardous or deleterious substances at the Site and for contribution for natural resource damages under CERCLA and CECRA. In addition, ARCO asserted common law negligence claims against Riedel and Weston, and asserted a contractual indemnity claim against MRI.

I. BNRR filed cross-claims against MPTP, Torger L. Oaas, T. Eric Oaas, Martha Oaas, Weston, and Riedel, and cross-claims and counterclaims against ARCO. On May 15, 1992, BNRR brought a third party complaint against MRI. On October 24, 1994, BNRR moved to amend its pleadings to assert third-party claims against

Bud King Construction Company, the State, State Department of Transportation, and State Highway Commission. BNRR alleged, inter alia, that all of these parties are liable to BNRR for cost recovery and contribution under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, CECRA, Mont. Code Ann. §§ 75-10-701 et seq., and common law in connection with the release or threatened release of hazardous or deleterious substances at the Site and for contribution for natural resource damages under CERCLA and CECRA.

J. On April 7, 1992, the Court ordered ARCO v. Oaas, et al. and United States v. MPTP, et al. consolidated for all purposes ("Consolidated Litigation").

K. On August 18, 1992, MRI filed cross-claims in this matter against MPTP, Torger L. Oaas, T. Eric Oaas, Martha Oaas, ARCO, Weston, and Riedel, and counterclaims against BNRR alleging, inter alia, that all of these parties are liable to MRI under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and CECRA, Mont. Code Ann. §§ 75-10-701 et seq., for contribution and for recovery of response costs in connection with the release or threatened release of hazardous or deleterious substances at the Site and for contribution for natural resource damages under CERCLA and CECRA. In its Answers, Counterclaims, and Cross-claims, MRI asserted a "Notice of Reservation of Cross-claims". On May 17, 1995, MRI moved to amend its pleadings to include additional claims it may have against ARCO, including claims

based on contract. ARCO has opposed this motion on procedural and substantive grounds, and contests MRI's ability or right to bring any additional claims in this action. The Court has not ruled on this motion.

L. On January 21, 1992, Riedel filed a counterclaim alleging that ARCO is liable under CERCLA, CECRA and common law for contribution to Riedel in connection with the release or threatened release of hazardous or deleterious substances at the Site.

M. On January 21, 1992, Weston filed a counterclaim alleging that ARCO is liable under CERCLA, CECRA and common law for contribution to Weston in connection with the release or threatened release of hazardous or deleterious substances at the Site and that ARCO is liable to Weston under the theories of recoupment and set-off.

N. The Public Comment Drafts of the RI Report and FS for the Site were completed in February 1993.

O. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the State, as the lead agency, published notice of the completion of the RI and FS and of the proposed plan for remedial action for the Site on May 7, 1993, in a major local newspaper of general circulation. The State provided an opportunity for written and oral comments from the public on the proposed plan and the supporting analysis and information in the administrative record. The transcript of the public hearing held on May 27, 1993, and

the written public comments are available to the public as part of the administrative record upon which the selection of the response action was based.

P. The EPA and State decision on the remedial action to be implemented at the Site is set forth in a final record of decision, executed by the State on September 21, 1993 and by EPA on September 22, 1993. The 1993 Record of Decision includes a responsiveness summary to the public comments received. The present value of the cost to perform the remedy, as estimated in the 1993 Record of Decision, ranges from $27,500,000.00 to $55,200,000.00. The EPA's and State's estimate of the cost to perform the remedy as set forth in the 1993 Record of Decision is approximately $35,300,000.00, as shown in Appendix A attached hereto. Notice of the final remedial action plan, as set forth in the 1993 Record of Decision, was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), on October 10, 1993.

Q. In accordance with the NCP, EPA requested in June 1994 that the State undertake the implementation of the Remedial Design for the Site. Upon such notice, EPA entered into a cooperative agreement with the State under which the State, using EPA funding, is implementing the Remedial Design. EPA and the State anticipate entering into a similar agreement to implement the Remedial Action and provide for Operation and Maintenance of the remedy at the Site. In accordance with Section 121(f)(1)(F)

of CERCLA, 42 U.S.C. § 9621(f)(1)(F), and for other reasons, the State was also given the opportunity to participate in the settlement discussions which led to this Consent Decree.

R. The United States will file an amended complaint, prior to the lodging of this Consent Decree with the Court, modifying its complaint against Inland Properties, Inc., to include the same claims against Dennis R. Washington, personally, and Montana Resources, Inc. The State will file, prior to the Court's approval and entry of this Consent Decree, a complaint which alleges the State's claims against the Settling Defendants for Past and Future Response Costs as costs of remedial action under Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607 and 9613(g)(2), and as remedial action costs under Section 715 of CECRA, Mont. Code Ann. § 75-10-715.

S. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the relevant Federal natural resource trustee, the United States Department of the Interior ("DOI"), on May 24, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship. The DOI chose not to participate in discussions relating to natural resource damages at the Site.

T. This Consent Decree does not address potential claims of the natural resource damage trustee of the United States for natural resource damages as no such claims have been brought by

the United States in either the first or second amended complaints filed in this Consolidated Litigation.

U. The objectives of the Parties in entering into this Consent Decree are: (1) the resolution as provided in this Consent Decree of liability of the Parties associated with Past and Future Response costs and past and future response and remedial action(s) regarding the Site; (2) the implementation of the Remedial Design, Remedial Action and Operation and Maintenance at the Site in a cost-effective and timely manner; (3) the resolution as provided in this Consent Decree of liability among the Settling Parties regarding the Site; (4) the resolution as provided in this Consent Decree of liability of the Settling Parties for the migration of any hazardous or deleterious substances consisting of pentachlorophenol, PAHs, TPHs, BTEX, dioxins, furans, or related constituents from the MPTP operations; and (5) the resolution as provided in this Consent Decree of liability of the Parties associated with the alleged releases or threatened releases of Waste Material at, on, or from the Site.

V. The Court, by approving the entry of this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, that 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.

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) and supplemental jurisdiction over the claims arising under the laws of the State. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in the District of Montana. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. NO ADMISSION OF LIABILITY

2. The Parties that have entered into this Consent Decree do not admit any liability arising out of the transactions or occurrences alleged in the complaints, counterclaims or cross-claims filed in the Consolidated Litigation; nor do the Settling Parties acknowledge that the release or threatened release of hazardous or deleterious substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The Settling Parties do not admit and retain the right to controvert any of the factual or legal statements made in any pleadings filed in the Consolidated Litigation in any judicial or administrative proceeding. This Consent Decree, any factual or legal statements

made in this Consent Decree, and the resulting obligations of the Parties shall not be admissible in any judicial or administrative proceeding against any Party, over its objection, as evidence of liability or as an admission of any factual or legal statements or determinations made herein, but it shall be admissible in an action to modify or enforce this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding brought by or on behalf of any natural resource trustee or any Party to this Consent Decree for natural resource damages as evidence of liability or as an admission of any factual or legal statements or determinations made herein.

IV. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the United States and the State, and upon the Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the responsibilities of the Settling Parties under this Consent Decree.

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever

terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

a. "ARCO" shall mean the Atlantic Richfield Company, a Delaware corporation, and its predecessors.

b. "BNRR" shall mean the Burlington Northern Railroad Company, a Delaware corporation, and its predecessors.

c. "CECRA" shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, Mont. Code Ann. §§ 75-10-701 et seq.

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

e. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that Remedial Action has been completed at the Site in accordance with the requirements of CERCLA, the NCP and the ROD.

f. "Consent Decree" shall mean this Decree and any attached appendices. In the event of any conflict between this Consent Decree and any Appendix, this Decree shall control.

g. "Day" shall mean a calendar day. "Working day" shall mean every day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or

State or Federal holiday, the period shall run until the Settling Defendant's close of business of the next working day.

h. "DEQ" shall mean the Montana Department of Environmental Quality, formerly known as the Montana Department of Health and Environmental Sciences ("DHES"), and any successor departments or agencies of the State.

i. "Effective Date" shall mean the date upon which this Consent Decree is entered by the Court.

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

k. "Future Response Costs" shall mean all costs, not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the State, EPA and the United States have incurred or will incur which relate to response actions at the Site in implementing the Remedial Action and Operation and Maintenance.

l. "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In calculating the Interest, EPA compounds on an annual basis.

m. "MRI" shall collectively refer to and mean Inland Properties, Inc., a Montana corporation; Montana Resources, Inc.,

a Montana corporation; and Dennis R. Washington, and their predecessors.

n. "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.

o. "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 to be developed for the Site.

p. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

q. "Parties" shall mean the United States, the State, Weston, Riedel, ARCO, BNRR, and MRI.

r. "Past Response Costs" shall mean all costs, not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States and the State have paid or will pay for response actions, including Remedial Design, undertaken at the Site prior to implementing the Remedial Action and Operation and Maintenance, together with accrued interest on all such costs.

s. "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).

t. "Record of Decision" or "ROD" shall mean the EPA/State Record of Decision in which the final remedial action plan relating to the Site is set forth, as executed by the State on September 21, 1993, and by the Regional Administrator, EPA Region VIII, on September 22, 1993, and attached hereto as Appendix B, all attachments thereto, and any subsequent modifications thereof. The "1993 Record of Decision" shall mean the EPA/State Record of Decision in which the final remedial action plan relating to the Site is set forth, as executed by the State on September 21, 1993, and by the Regional Administrator, EPA Region VIII, on September 22, 1993, attached hereto as Appendix B, and all attachments thereto, only.

u. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision, except for O&M.

v. "Remedial Design" shall mean the response actions at the Site to design the Remedial Action.

w. "Riedel" shall mean Riedel Environmental Services, Inc., an Oregon corporation and its successors.

x. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

y. "Settlement Account" shall mean the State special revenue account related to the Site into which any payments are made as provided in Section IX of the Consent Decree.

z. "Settling Defendants" shall mean ARCO, BNRR, and MRI, and their successors and assigns to the extent the successor's and assign's liability at this Site derives from the liability of ARCO, BNRR, or MRI, respectively, and not on any independent basis.

aa. "Settling Parties" shall mean ARCO, BNRR, MRI, Riedel, and Weston.

ab. "Site" shall mean the Montana Pole and Treating Plant Superfund site, encompassing approximately 45 acres, located in Silver Bow County in Butte, Montana, generally depicted and described in Appendix C to this Consent Decree, and shall include any area where hazardous or deleterious substances consisting of pentachlorophenol, PAHs, THPs, BTEX, dioxins, furans, or related constituents, from the MPTP operations, have been deposited, stored, disposed of, placed, or are otherwise located or come to be located in the future. With respect to any hazardous or deleterious substances, other than hazardous or deleterious substances consisting of pentachlorophenol, PAHs, THPs, BTEX, dioxins, furans, or related constituents from the MPTP operations, the Site shall be deemed to include only such hazardous or deleterious substances located within the boundary marked on page 1 of Appendix C, and metals contamination found within that portion of the Chicago, Milwaukee, St. Paul & Pacific Railroad fill materials running south from Silver Bow Creek a distance of 1650 feet.

ac. "State" shall mean the State of Montana.

ad. "United States" shall mean the United States of America.

ae. "Waste Material" shall mean: (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous or deleterious substance" under CECRA, Mont. Code Ann. § 75-10-701(8).

af. "Weston" shall mean Roy F. Weston, Inc., a Pennsylvania corporation.

VI. REIMBURSEMENT OF RESPONSE COSTS

5. Payment of Past Response Costs to the United States. Within thirty (30) days of the Effective Date of this Consent Decree, ARCO, BNRR and MRI shall pay, in full and final satisfaction of Past Response Costs, to the United States for deposit to the Hazardous Substance Superfund a total of Two Million, Seven Hundred Thousand Dollars ($ 2,700,000.00) as follows:

a. ARCO shall be responsible for reimbursing the United States for Past Response Costs in the amount of $1,989,630.00;

b. BNRR shall be responsible for reimbursing the United States for Past Response Costs in the amount of $568,350.00; and

c. MRI shall be responsible for reimbursing the United States for Past Response Costs in the amount of $142,020.00.

6. Payments due under Paragraph 5 shall be made in the form of a Fedwire Electronic Funds Transfer ("EFT") to the New York Federal Reserve Bank/U.S. Treasury Department, referencing USAO file number 95Z0291/001, EPA Region VIII, Site/Spill ID # 69, and the Department of Justice case number 90-11-2-429. Payment shall be made in accordance with instructions provided to the Settling Defendants by the United States Attorney for the District of Montana before execution of the Consent Decree by the Settling Defendants. Any EFTs received by the New York Federal Reserve Bank after 4:00 p.m. (Eastern Time) will be credited to the next working day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXII (Notices and Submissions) and the Financial Management Officer, EPA Region VIII, Office of Technical and Management Services, 999 18th Street, Denver, CO 80202. Failure to provide such notice shall not subject the Settling Defendants to stipulated penalties under Paragraph 25 of this Consent Decree.

7. Payment of Future Response Costs to the United States and the State. Each of the Settling Defendants is responsible for the following respective percentage shares of required payments under the terms of this Consent Decree: ARCO-73.69% of required payments; BNRR- 21.05% of required payments; and, MRI-5.26% of required payments.

a. Settling Defendants shall pay, subject to the reopener provisions in Paragraphs 10, 29, and 30, their respective shares in satisfaction of Future Response Costs at the Site, Thirty Five Million Seventy Thousand Dollars ($35,070,000.00) to the United States and the State as provided herein to the Settlement Account to be established and maintained pursuant to the terms of Section IX (Settlement Account) of this Consent Decree.

b. The sum of $35,070,000.00 described in this Section, and due and owing the United States and the State, shall be paid by the Settling Defendants pursuant to the respective percentage shares set forth in this Paragraph 7 by payment to the Settlement Account as follows:

(i) on or before August 1, 1996, ARCO shall pay the sum of Fourteen Million Five Hundred Sixty Eight Thousand Five Hundred Thirteen Dollars ($14,568,513.00) without interest; (ii) on or before August 1, 1997, ARCO shall pay the sum of Seven Million Three Hundred Sixty Nine Thousand Dollars ($7,369,000.00) with interest on said sum at the rate of 7% compounded annually for the period August 2, 1996 through August 1, 1997; (iii) on or

before August 1, 1998, or three years from the date of entry of this Consent Decree, whichever date is later, ARCO shall pay the sum of Three Million Nine Hundred Five Thousand Five Hundred Seventy Dollars ($3,905,570.00) with interest on said sum at the rate of 7% compounded annually for the period August 2, 1996 until the date of payment; (iv) on or before August 1, 1996, BNRR shall pay the sum of Four Million One Hundred Sixty One Thousand Five Hundred Eighty Five Dollars ($4,161,585.00) without interest; (v) on or before August 1, 1997, BNRR shall pay the sum of Two Million One Hundred Five Thousand Dollars ($2,105,000.00) with interest on said sum at the rate of 7% compounded annually for the period August 2, 1996 through August 1, 1997; (vi) on or before August 1, 1998, or three years from the date of entry of this Consent Decree, whichever date is later, BNRR shall pay the sum of One Million One Hundred Fifteen Thousand Six Hundred Fifty Dollars ($1,115,650.00) with interest on said sum at the rate of 7% compounded annually for the period August 2, 1996 until the date of payment, and shall pay one-half of the cost of the remediation of the portion of the Chicago, Milwaukee, St. Paul & Pacific Railroad fill materials running south from Silver Bow Creek a distance of 1650 feet, up to a maximum, for BNRR's 50% share, of $100,000.00. By June 1, 1998, EPA/DEQ will submit an accounting of their expenditures to date for this railroad remediation action. If this work is not completed by that date, EPA/DEQ will submit a subsequent accounting with instructions for

payment, and BNRR shall pay the balance within sixty (60) days of receipt of this accounting; (vii) on or before August 1, 1996, MRI shall pay the sum of One Million Thirty Nine Thousand Nine Hundred Two Dollars ($1,039,902.00) without interest; (viii) on or before August 1, 1997, MRI shall pay the sum of Five Hundred Twenty Six Thousand Dollars ($526,000.00) with interest on said sum at the rate of 7% compounded annually for the period August 2, 1996 through August 1, 1997; (ix) on or before August 1, 1998, or three years from the date of entry of this Consent Decree, whichever date is later, MRI shall pay the sum of Two Hundred Seventy Eight Thousand Seven Hundred Eighty Dollars ($278,780.00) with interest on said sum at the rate of 7% compounded annually for the period August 2, 1996 until the date of payment. All payments to the Settlement Account shall be made by EFT. A Settling Defendant(s) shall have the option of making any payment(s) prior to the due date including any accrued interest, without incurring any prepayment penalty. For any payment made prior to its due date, any accrued interest which may be due shall be prorated on the basis of 365 days a year through and including the date of payment.

c. If, at the conclusion of the Remedial Action and Operation and Maintenance, including any use of the reopener provisions by the United States or the State, and after adequate provision for future obligations of the State with respect to the Site, as determined by EPA and the State, funds remain in the

Settlement Account, the funds shall be transferred to the Hazardous Substance Superfund or to the United States in a manner to be specified by EPA, up to the amount of unreimbursed Past Response Costs for the Site. EPA and the State's determination under this Paragraph is not subject to challenge by the Settling Defendants or to the Dispute Resolution procedures in Section VIII.

8. Obligation for Payment of Response Costs. The respective obligations of ARCO, BNRR and MRI to pay the amounts referenced in Paragraph 7, above, to the United States and the State, and the other obligations set forth in Sections VI (Reimbursement of Response Costs) and VII (Additional Response Cost Reopener) are solely the respective and individual responsibility of ARCO, BNRR or MRI and are not a joint and several liability or obligation.

9. Payment of any money by the Settling Defendants for Past Response Costs or Future Response Costs under this Consent Decree is not a fine, penalty or monetary sanction.

VII. ADDITIONAL RESPONSE COST REOPENER

10. a. For the purposes of this Section VII, the term "Cost Reopener Amount" shall mean the greater of either a) the sum of the payments made by Settling Defendants into the Settlement Account plus net earnings of the Settlement Account plus $6,000,000.00 or b) $41,300,000.00, provided the Settling Defendants make the payments set forth in Paragraph 7. Except as provided in Paragraphs 26, 29, 30 and 40, the Settling Defendants

shall not be responsible for Future Response Costs in addition to those paid by the Settling Defendants pursuant to Paragraph 7 of this Consent Decree, unless the Future Response Costs exceed the "Cost Reopener Amount." If demanded by the United States and the State, as set forth in this Paragraph 10, the Settling Defendants shall be individually responsible for their respective percentage shares, as set forth in Paragraph 7, of the amount of Future Response Costs which exceed the "Cost Reopener Amount." Such exceedance, if any, shall be the total actual Remedial Action costs and actual and/or estimated Operation and Maintenance costs for the final remedial action plan, minus the "Cost Reopener Amount."

b. The United States and the State shall present a demand to the Settling Defendants for the exceedance of the "Cost Reopener Amount." The United States' and the State's demand shall include specific instructions for payment of the demanded funds and shall contain the payment amounts sought by the United States and the State from ARCO, BNRR, and MRI, and an accounting of the expenditure of all costs incurred to date by the United States and the State in implementing the Remedial Action and O&M, sufficient to enable the Settling Defendants to evaluate the expenditures to determine whether those expenditures were consistent with CERCLA, CECRA, the NCP, and the ROD remedy. The accounting shall include supporting documentation including a standard cost package for EPA's costs which consists of: (1)

payroll information, including the SCORE report or an equivalent cost summary and all timesheets; (2) travel information, which includes a SCORE report or an equivalent cost summary, travel authorizations, travel vouchers, and required receipts; (3) EPA contractor data, including site specific vouchers and progress reports, and the SCORE report or an equivalent cost summary; (4) EPA Interagency Agreements ("IAGs"), including SCORE reports or an equivalent cost summary, IAG agreements and any amendments thereto, and progress reports, if any; and (5) EPA Cooperative Agreements, including SCORE reports or an equivalent cost summary, cooperative agreements and any amendments thereto, drawdown documentation, and State quarterly and State contractor monthly progress reports. The accounting of the costs incurred by the State shall itemize the State costs, and shall include, at a minimum, the following information: the names and titles of State employees and retained legal counsel, date(s), time and other direct charges; indirect charges; and State contractor vouchers and/or invoices for work performed for State activities incurred in implementing the Remedial Action and O&M. The demand, accounting and the supporting documentation shall be included in the record for the Site maintained by EPA and the State.

c. The Settling Defendants shall pay the exceedence of the "Cost Reopener Amount" in accordance with their respective percentage shares as set forth in Paragraph 7, as demanded by the

United States and the State. Within 120 days after receipt of the demand, each Settling Defendant will pay or dispute the sum demanded of it. However, if the United States and the State have not yet actually incurred expenses in excess of the Cost Reopener Amount, each Settling Defendant shall, within 120 days of demand, either dispute or agree to pay the Settling Defendant's respective share of the requested sum, and the obligation to submit payment shall be tolled until the Cost Reopener Amount has actually been exceeded. Failure to dispute the payment of such sums within the allotted time shall be deemed an agreement to pay such sums. In the event a demand is presented under this Section and is disputed by the Settling Defendant(s), Settling Defendant(s) reserve all rights to challenge this demand, as provided in Paragraph 33 h. of this Consent Decree.

VIII. DISPUTE RESOLUTION

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

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

13. a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA and the State shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Settling Defendant(s) invoke(s) the formal dispute resolution procedures of this Section by serving on the United States and the State 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 the Settling Defendant(s). The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 14 or 15.

b. Within twenty-one (21) days after receipt of Settling Defendants' Statement of Position, EPA and the State

will serve on Settling Defendants a 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 and the State. This Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 14 or 15. Within fourteen (14) days after receipt of EPA's and the State's Statement of Position, Settling Defendant(s) may submit a reply.

c. If there is disagreement as to whether dispute resolution should proceed under Paragraph 14 or 15, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal 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 14 and 15.

14. Formal dispute resolution for disputes that are accorded review on the administrative record under CERCLA or applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. Nothing in this Section shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions, except as provided in Paragraph 33 h.

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, and in the event of a dispute regarding reopeners under Sections XII (Pre-Certification Reservations) and XIII (Post-Certification Reservations), EPA and State records regarding information and conditions known under Paragraph 31 shall be deemed included in the administrative record for the dispute. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Assistant Regional Administrator for Ecosystems Protection and Remediation ("ARA"), EPA Region VIII, or his successor, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 14 a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 14 c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 14 b. shall be reviewable by this Court, provided that a motion for judicial review is filed by the Settling Defendant(s) with the Court and served on all Parties within twenty (20) days of 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 and/or the State may file a response to Settling Defendants' motion within twenty (20) days of the receipt of the motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the ARA 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 Paragraph 14 a.

15. Formal dispute resolution for disputes that are not otherwise accorded review on the administrative record under CERCLA or applicable principles of administrative law, shall be governed by this Paragraph. Following receipt of Settling Defendant(s') Statement of Position submitted pursuant to Paragraph 13, the ARA, EPA Region VIII, or his successor, will issue a final decision resolving the dispute. The ARA's decision shall be binding on the Settling Defendants unless, within twenty (20) days of receipt of the decision, the Settling Defendants file with the Court and serve on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States and/or the State may file a response to Settling Defendants' motion within twenty (20) days of the receipt of the motion.

16. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA and the State or the Court agree otherwise. Stipulated penalties as provided for in Paragraph 25 with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraphs 25 through 27.

17. As to any disputes solely between or among the Settling Parties arising under or with respect to this Consent Decree, the party or parties to the dispute may file with the Court and serve upon the United States, State and Settling Parties, a motion for judicial review of the dispute 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.

IX. SETTLEMENT ACCOUNT

18. All payments made by Settling Defendants described in Paragraph 7 shall be paid to the United States and the State by

deposit into a State special revenue account as provided for in Mont. Code Ann. § 17-2-102(1)(a)(ii)(A), which shall be held and maintained by the State in accordance with the requirements of this Consent Decree (the "Settlement Account"). Payments shall be made by EFT to First Bank Montana, Helena Branch, Bank Routing No. 092900383, State Treasurer Account No. 15604100221, specifying in the addendum, third party record, or similar information field "DEQ/MT Pole;To:ADMIN/CENT.SERV." The party making the payment is to contact the "Administrator, Centralized Services Division," DEQ (telephone: (406) 444-2442), at least 48 hours prior to initiating the wire transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers. Failure to provide such notice shall not subject the Settling Defendants to stipulated penalties under Paragraph 25 of this Consent Decree. Transfers received at the depository institution after 2:00 p.m. Mountain Time will be credited to the next working day.

19. The Settlement Account shall be an interest bearing account, and all interest and earnings shall be paid into the Settlement Account and shall be used in the same manner and for the same purposes as the other funds in the Settlement Account.

20. Funds in the Settlement Account, including earnings, shall be used by the State, together with EPA, for the purpose of paying Future Response Costs at the Site and for no other

purpose. For the purposes of Mont. Code Ann. § 17-2-111, or any similar provision of law, no portion of the Settlement Account is to be treated as State general fund money, nor is any portion to be converted or transferred to the State general fund.

21. DEQ shall arrange for the investment of funds in the Settlement Account by executing an Investment Agreement with the Montana State Board of Investments. The State and the United States shall bear any and all risk of loss of any and all funds in the Settlement Account resulting from any decrease in the corpus of the investment funds or fluctuations in the rate of return on the investment of such funds. The State Board of Investments shall be entitled to fees, to be deducted from the interest and earnings paid on the Settlement Account, in accordance with the Board's standard policy on fees for investments managed by the Board.

22. DEQ shall provide quarterly statements to EPA and the Settling Defendants reporting on the funds received into and disbursed from the Settlement Account, including administrative fees and expenses, and the balance in the account as of the date of the statement. The quarterly statements should also specify the interest rate, interest earnings and the time period during which interest was earned.

23. Except as provided in Paragraph 33 h., Settling Defendants and their agents cannot contest or object to the disbursements described above and such disbursements are not

subject to the Dispute Resolution procedures described in Section VIII or otherwise subject to judicial review.

X. FAILURE TO MAKE TIMELY PAYMENTS

24. Interest on Late Payments. In the event that any payments required by Section VI are not made when due, Interest, as provided for in Paragraph 4 1., as to Past Response Costs; and interest as described in Paragraph 7 as to Future Response Costs, shall accrue on the unpaid balance, from the date payment is due through the date of payment.

25. Stipulated Penalty. If any amounts due to the United States or to the State under Paragraphs 5 or 7 of this Consent Decree are not paid by the required date, the defaulting Settling Defendant(s) shall pay as a stipulated penalty, in addition to the interest required by Paragraph 24, the sum of $500.00 per day for each day that such payment is late. Stipulated penalties are due and payable within thirty (30) days of the defaulting Settling Defendant(s') receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph 25 shall be paid as set forth in Paragraph 6. Penalties shall accrue as provided above regardless of whether EPA has notified the defaulting Settling Defendant(s) of the violation or made a demand for payment, but need only be paid upon demand.

26. If the United States or the State must bring an action to collect any payment required by this Consent Decree, the defaulting Settling Defendant(s) shall reimburse the United

States and the State for all costs of such action, including but not limited to costs of attorney time. Nothing in this Paragraph is meant to affect or alter the Settling Defendants' reserved rights and defenses under Paragraph 33 h.

27. Payments made under Paragraphs 24 and 25 shall be in addition to any other remedies or sanctions available to EPA and the State by virtue of a defaulting Settling Defendant('s) failure to make timely payments required by this Consent Decree; provided, however, that the United States or the State shall not seek civil penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for any violation for which a stipulated penalty is provided herein except in the case of a willful violation of Paragraph 5 or 7 of this Consent Decree. Notwithstanding any other provision of this Section, the United States and the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XI. COVENANT NOT TO SUE BY THE UNITED STATES AND THE STATE

28. a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as provided in Paragraphs 10, 26, 29, 30, 32, and 40, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or Section 7003 of

RCRA, 42 U.S.C. § 6973, relating to the Site. Except as provided in Paragraphs 10, 29, and 30 with respect to future liability, these covenants not to sue shall take effect upon the receipt of Settling Defendants' respective payments, as described in Paragraph 5. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as provided in Paragraphs 10, 26, 29, 30, 32, and 40, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106, 107(a), and 113(f)(1) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613(f)(1), Sections 711, 715, and 719 of CECRA, Mont. Code Ann. §§ 75-10-711, 75-10-715, and 75-10-719, or Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. Except as provided in Paragraphs 10, 29, and 30, with respect to future liability, these covenants not to sue shall take effect upon the payment of Settling Defendants' respective payments, as described in Paragraph 5. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree. These covenants not to

sue extend only to the Settling Defendants and do not extend to any other person.

c. While the State does not release or covenant not to sue any party with respect to natural resource damage claims under CERCLA or CECRA, the State will, upon Court approval and entry of this Consent Decree, provide to BNRR and MRI a letter which sets forth the facts that: neither BNRR nor MRI has been named as a defendant in the State's pending natural resource damage case relating to the Site; that by court order in that case the time for mandatory joinder of defendants has passed; that the State has not so joined BNRR and MRI; and that the State has no present intention to join BNRR or MRI.

XII. UNITED STATES' AND THE STATE'S PRE-CERTIFICATION RESERVATIONS

29. a. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

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

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment. ARCO, BNRR, and MRI agree that in the event the United States seeks additional costs of response, or orders additional action, such costs would be reimbursed on the basis of the respective percentage shares of each Settling Defendant as set forth in Paragraphs 7 and 8.

b. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to the State, are discovered, or

(ii) information, previously unknown to the State, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment. ARCO, BNRR, and MRI agree that in the event the State seeks additional costs of response, or orders additional

action, such costs would be reimbursed on the basis of the respective percentage shares of each Settling Defendant as set forth in Paragraphs 7 and 8.

c. In the event a proceeding is instituted or an order, action, demand, or claim is taken or presented under this Section, Settling Defendants reserve all rights and defenses, as provided in Paragraph 33 h. of this Consent Decree.

XIII. UNITED STATES' AND THE STATE'S POST-CERTIFICATION RESERVATIONS

30. a. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

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

(ii) information, previously unknown to EPA, is received, in whole or in part,

and 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. ARCO, BNRR, and MRI agree that in the event the United States seeks additional costs of response, or orders

additional action, such costs would be reimbursed on the basis of the respective percentage shares of each Settling Defendant as set forth in Paragraphs 7 and 8.

b. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to the State, are discovered, or

(ii) information, previously unknown to the State, is received, in whole or in part,

and 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. ARCO, BNRR, and MRI agree that in the event the State seeks additional costs of response, or orders additional action, such costs would be reimbursed on the basis of the respective percentage shares of each Settling Defendant as set forth in Paragraphs 7 and 8.

c. In the event a proceeding is instituted or an order, action, demand, or claim is taken or presented under this

Section, Settling Defendants reserve all rights and defenses, as provided in Paragraph 33 h. of this Consent Decree.

31. For purposes of Paragraph 29, the information and the conditions known to EPA and the State shall include only that information and those conditions known to the EPA and the State as of the date the 1993 Record of Decision was signed and set forth in the 1993 Record of Decision for the Site, the administrative record supporting the 1993 Record of Decision, or the record for the Site maintained by EPA following issuance of the 1993 Record of Decision until the date of lodging of this Consent Decree. For purposes of Paragraph 30, the information and the conditions known to EPA and the State shall include only that information and those conditions known to the EPA and the State as of the date of Certification of the Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the 1993 Record of Decision, any post-1993 Record of Decision administrative record, any 1993 Record of Decision amendment or Explanation of Significant Differences, the record for the Site maintained by EPA and the State following issuance of the 1993 Record of Decision, or in any information received or discovered by EPA and the State pursuant to the requirements of this Consent Decree prior to the Certification of Completion of the Remedial Action. Further, for purposes of Paragraphs 29 and 30, the information and the conditions known to EPA are and shall be imputed to the State,

and the information and the conditions known to the State are and shall be imputed to EPA. For purposes of Paragraphs 29 and 30, a failure of the Remedial Action or O&M, in and of itself, shall not constitute an unknown condition or unknown information as grounds for a reopener, unless it results from an unknown condition or unknown information; nor shall information or conditions received or discovered during the Remedial Design, or the presence of or potential or actual migration of hazardous or deleterious substances consisting of pentachlorophenol, PAHs, TPHs, BTEX, dioxins, furans, or related constituents from the MPTP operations at, on or to the Silver Bow Creek/Butte Area Site constitute an unknown condition or unknown information as grounds for a reopener.

32. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 28 (Covenants Not to Sue by the United States and the State). The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources as provided in Section 107 of CERCLA, 42 U.S.C. § 9607, CECRA, Mont. Code Ann. § 75-10-715, or any other federal or state law;

(4) criminal liability; and,

(5) liability for violations of federal or state law by the Settling Defendants relating to the Site which occur during or after implementation of the Remedial Action.

XIV. COVENANTS AND RELEASES BY SETTLING DEFENDANTS AND OTHER PARTIES

33. a. Except as provided in Paragraphs 33b. and h. and any proceedings permitted by this Consent Decree in Section VIII (Dispute Resolution), Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; (ii) any claim against the United States pursuant to CERCLA Sections 107 and 113; or (iii) any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions. Nothing in this Consent Decree shall be deemed to constitute

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

b. The Settling Defendants specifically reserve, and this Consent Decree is without prejudice to: (i) claims or causes of action against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his 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, any such claim shall not include a claim for any damages caused by the act or omission of any person who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, other than as provided in Paragraph 33 h. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; (ii) any claim or cause of action against the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, CECRA, or any other federal or state law for natural resource damages, including, but not limited to, the litigation styled as State of Montana v. ARCO (CV 83-317-HLN-PGH); (iii) any

claim or cause of action that the Settling Defendants may have against the United States in the event the United States or the State asserts a claim or order against any of the Settling Defendants pursuant to the provisions of Section VII (Additional Response Cost Reopener) or Section XII (Pre-Certification Reservations) or Section XIII (Post-Certification Reservations) of this Consent Decree; and (iv) any claim or cause of action against the United States under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or CECRA, Mont. Code Ann § 75-10-715, or common law arising out of the off-Site disposal of Waste Materials.

c. ARCO, BNRR, and MRI each release Riedel and Weston and their administrators, principals, employees, representatives, agents, successors, and assigns, from all past, present, and future claims and causes of action relating to the Site or relating to Riedel's or Weston's activities in connection with the Site, whether or not such claims or causes of action are currently known or have arisen as of the date of the lodging of this Consent Decree, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation.

d. Riedel and Weston release each other and ARCO, BNRR, and MRI, and their heirs, executors, administrators, principals, employees, representatives, agents, assigns, and successors, from all past, present, and future claims and causes of action

relating to the Site or relating to ARCO's, BNRR's or MRI's activities in connection with the Site, whether or not such claims or causes of action are currently known or have arisen as of the date of the lodging of this Consent Decree, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation.

e. Except as provided in this Paragraph and Paragraph 33h. and any proceedings permitted by this Consent Decree in Section VIII (Dispute Resolution), Settling Defendants each hereby covenant not to sue and agree not to assert any past, present, or future claims or causes of action against the State, its agencies, instrumentalities, officials, employees, agents and contractors, with respect to the Site or relating to the State's activities in connection with the Site, whether such claims or causes of action are currently known or not, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation.

However, the Settling Defendants specifically reserve and exclude from this Paragraph, and this Consent Decree is without prejudice to, their right to bring against the State, including its successors and assigns: (i) any claim or cause of action for natural resource damages under CERCLA, CECRA, or any other federal or state law, including, but not limited to, claims which have been asserted by ARCO against the State in State of Montana v. ARCO, (CV-83-317-HLN-PGH), in the U.S. District Court for the

District of Montana; (ii) any claim or cause of action under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or CECRA, Mont. Code Ann. § 75-10-715, in the event the United States or the State asserts a claim or order against any of the Settling Defendants pursuant to the provisions of Section VII (Additional Response Cost Reopener) or Section XII (Pre-Certification Reservations) or Section XIII (Post-Certification Reservations) of this Consent Decree; and (iii) any claim or cause of action under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or CECRA, Mont. Code Ann. § 75-10-715, or common law arising out of the off-Site disposal of Waste Materials.

f. Except as reserved by this Paragraph, and any other proceedings permitted by this Consent Decree in Section VIII (Dispute Resolution), ARCO and BNRR mutually, jointly, and severally release each other, their heirs, executors, administrators, principals, employees, representatives, agents, assigns, and successors, from all past, present, and future claims and causes of action relating to the Site or relating to each other's activities in connection with the Site whether or not such claims or causes of action are currently known or have arisen as of the date of the lodging of this Consent Decree, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation. ARCO's and BNRR's release is conditioned upon the complete and satisfactory

District of Montana; (ii) any claim or cause of action under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or CECRA, Mont. Code Ann. § 75-10-715, in the event the United States or the State asserts a claim or order against any of the Settling Defendants pursuant to the provisions of Section VII (Additional Response Cost Reopener) or Section XII (Pre-Certification Reservations) or Section XIII (Post-Certification Reservations) of this Consent Decree; and (iii) any claim or cause of action under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or CECRA, Mont. Code Ann. § 75-10-715, or common law arising out of the off-Site disposal of Waste Materials.

f. Except as reserved by this Paragraph, and any other proceedings permitted by this Consent Decree in Section VIII (Dispute Resolution), ARCO and BNRR mutually, jointly, and severally release each other, their heirs, executors, administrators, principals, employees, representatives, agents, assigns, and successors, from all past, present, and future claims and causes of action relating to the Site or relating to each other's activities in connection with the Site whether or not such claims or causes of action are currently known or have arisen as of the date of the lodging of this Consent Decree, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation. ARCO's and BNRR's release is conditioned upon the complete and satisfactory

performance of their respective payment obligations under Section VI of this Consent Decree.

However, ARCO and BNRR specifically reserve and exclude from this release, and this Consent Decree is without prejudice to, their right to bring any claim, counterclaim, including any claim or cause of action under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, or CECRA, Mont. Code Ann. § 75-10-715, or any other cause of action against each other, their successors or assigns arising out of the off-Site disposal of Waste Materials.

g. Except as reserved by this Paragraph, and any other proceedings permitted by this Consent Decree in Section VIII (Dispute Resolution), BNRR and MRI mutually, jointly, and severally release each other, their heirs, executors, administrators, principals, employees, representatives, agents, assigns, and successors, from all past, present, and future claims and causes of action relating to the Site or relating to each other's activities in connection with the Site whether or not such claims or causes of action are currently known or have arisen as of the date of the lodging of this Consent Decree, including, but not limited to, any claims which were or could have been asserted in this Consolidated Litigation. BNRR's and MRI's release is conditioned upon the complete and satisfactory performance of their respective payment obligations under Section VI of this Consent Decree.

However, BNRR and MRI specifically reserve and exclude from this release, and this Consent Decree is without prejudice to, their right to bring any claim, counterclaim, including any claim or cause of action under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, or CECRA, Mont. Code Ann. § 75-10-715, or any other cause of action against each other, their successors or assigns, arising out of the off-Site disposal of Waste Materials.

h. In the event proceedings are instituted or an order is issued seeking to compel Settling Defendants to perform further response actions or a demand or claim is presented under Sections XII and XIII (United States' and the State's Pre- and Post-Certification Reservations) or Section VII (Additional Response Cost Reopener) by the United States or the State, Settling Defendants reserve the right to challenge such proceeding, order, demand, claim, or action, the selection of response actions, the remedy itself, or any and all costs or expenses incurred or paid by the United States or the State and further reserve any and all defenses related thereto.

i. This Consent Decree does not include releases of claims between ARCO and MRI. MRI and ARCO specifically reserve and exclude from this Consent Decree any and all contract claims or defenses arising under the Agreements with ARCO dated September 19, 1985, and December 18, 1985, and this Consent Decree shall not validate or abrogate such claims, and is not a final judgment on the merits as to such claims. This Paragraph shall not waive

or limit ARCO's or MRI's right to contribution protection under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

34. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

XV. EFFECT OF SETTLEMENT-CONTRIBUTION PROTECTION

35. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Parties have resolved their liability to the United States and the State as provided herein, and are each entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and by CECRA, Mont. Code Ann. § 75-10-719, to their full extent, for Matters Addressed in this Consent Decree. The Matters Addressed in this Consent Decree are: (1) resolution as provided in this Consent Decree of liability of the Parties associated with Past and Future Response costs and past and future response and remedial action(s) regarding the Site; (2) the implementation of the Remedial Design, Remedial Action and Operation and Maintenance at the Site in a cost-effective and

timely manner; (3) the resolution as provided in this Consent Decree of liability among the Settling Parties regarding the Site; (4) the resolution as provided in this Consent Decree of liability of the Settling Parties for the migration of any hazardous or deleterious substances consisting of pentachlorophenol, PAHs, TPHs, BTEX, dioxins, furans, or related constituents from the MPTP operations; and (5) the resolution as provided in this Consent Decree of liability of the Parties associated with the alleged releases or threatened releases of Waste Material at, on, or from the Site.

36. The Settling Parties agree that, with respect to any suit or claim for contribution brought by them for matters related to the Site or this Consent Decree, except with respect to any natural resource damages suits or claims filed or to be filed, including, but not limited to, filings in State of Montana v. ARCO, (CV 83-317-HLN-PGH), or with respect to United States v. ARCO, et al., (CV 89-39-BU-PGH), they will notify the United States and the State in writing no later than thirty (30) days prior to the initiation of such suit or claim. Settling Parties also agree that, with respect to any suit or claim for contribution brought against them for matters related to the Site or this Consent Decree, except with respect to any natural resource damages suits or claims filed or to be filed, including, but not limited to, filings in State of Montana v. ARCO, (CV 83-317-HLN-PGH), or with respect to United States v. ARCO, et al.,

(CV 89-39-BU-PGH), they will notify in writing the United States and the State within thirty (30) days of service of the complaint on them. In addition, Settling Parties shall notify the United States and the State within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial for matters related to the Site or this Consent Decree.

37. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the Consolidated Litigation; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XI (Covenants Not to Sue by the United States and the State).

XVI. SITE ACCESS

38. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States, the State, and their representatives, including EPA and DEQ contractors hired to perform the Remedial Design, Remedial

Action or O&M, access at all reasonable times to the Site and any other property to which access is required for implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree, including, but not limited to:

a. Monitoring or conducting remedial or other activities at the Site relating to Remedial Design, Remedial Action, and O&M;

b. Verifying any data or information submitted to the United States or the State regarding the Site;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples; and

e. Assessing the need for, planning, or implementing Remedial Design, Remedial Action, or Operation and Maintenance actions at or near the Site.

XVII. ACCESS TO INFORMATION

39. Except as to information already provided to the United States or the State in the Consolidated Litigation or administrative proceedings regarding the Site including, but not limited to, any and all of the documents provided to the United States and the State by ARCO under the RI/FS AOC, and except as provided in Section XX (Confidential Business Information and Privileged Documents), Settling Defendants shall provide to EPA

and the State, upon written request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site. This Section does not constitute or create an obligation to provide to the United States and the State any documents and information with respect to any natural resource damages action, suits or claims, including, but not limited to, State of Montana v. ARCO, (CV 83-317-HLN-PGH), or with respect to United States v. ARCO et al., (CV 89-39-BU-PGH).

XVIII. INSTITUTIONAL CONTROLS

40. a. The 1993 Record of Decision anticipates the implementation and maintenance of certain institutional controls. These are appropriate property use restrictions through deed restrictions or other means to prevent further residential use at the Site and to reference the waste management units identified at the Site by the United States or the State; zoning under local ordinance to prevent further residential use at the Site; restricting ground water use for those areas at the Site where ground water performance standards are not met; and other institutional controls related to implementation of the remedial action, such as fencing and site security. The institutional

controls related to remedial action, such as fencing and site security, will be implemented by EPA and the State through ROD implementation. The Settling Defendants shall use best efforts to obtain the implementation of the required institutional controls described below, in cooperation with the Consolidated City and County of Butte Silver Bow ("BSB").

i. Appropriate Property Use Restrictions. Within one hundred and twenty (120) days of the Effective Date of this Consent Decree, and after meeting and conferring with BSB, Settling Defendants shall propose to EPA and the State acceptable deed restrictions, easement conveyances, property conveyances, or other property restrictions on Settling Defendants' property interests at the Site to prevent further residential use at the Site and to reference the waste management units identified by the United States or the State, as described below, for approval. Upon approval, each Settling Defendant shall place the approved deed restrictions, easement conveyances, property conveyances, or other property restrictions, as to the following property interests it has in property located at the Site:

MRI: MRI denies it has or ever had a legal interest in property at the Site; notwithstanding, Inland Properties, Inc. shall place the property use restrictions on its record ownership of a "partial interest in Homestead Entry 1577", and on its record ownership of a portion of M.A. Placer 944.

ARCO: All right, title, interest, claim, and demand, including all mineral interests, in the portion of the Smelter Placer M.A. 1916, M.E. 499, in a portion of M.A. 944, M.E. 1536 Patented Placer Mining Claim and the portion of the Colorado Placer M.A. 2578, M.E. 567 located within the boundaries of the Site.

BNRR: BNRR denies it has any present property interest in the Hansen Packing Company spur or the Montana Pole and Treating Plant spur; however, it shall place the property use restriction on any and all interests it has in these spurs.

If this obligation involves transfer of property interests to BSB, if necessary, the United States and the State shall use their best efforts to enter into a Prospective Purchaser Agreement with BSB with respect to the transferred property interests.

ii. Development Standards. In accordance with the terms and conditions of the ARCO/BSB Memorandum of Understanding dated March 7, 1995 ("MOU"), BSB has proposed revisions to the BSB Master Plan regarding zoning at the Site to complement the Site remedy and prevent further residential development, for adoption by the BSB Planning Board. The MOU anticipates that following adoption of the proposed BSB Master Plan revisions, BSB will consider, if necessary, revisions in the zoning ordinance or subdivision regulations at the Site to prevent further

residential use applicable to the Site. Within one hundred and twenty (120) days of the Effective Date of this Consent Decree, the Settling Defendants' shall meet and confer with BSB on this matter, and shall use their best efforts to establish the zoning restrictions described in the 1993 Record of Decision. The plan for establishing the zoning restrictions in accordance with the 1993 Record of Decision shall be presented to EPA and the State for approval.

iii. Ground Water Restrictions. In accordance with the terms and conditions of the MOU, ARCO has agreed to provide funding not to exceed $600,000.00 to implement ground water well restrictions at the Site. In accordance with the terms and conditions of the MOU, BSB has passed a resolution to create a Water Quality District ("District") and has petitioned the State Board of Environmental Review for approval of the District's program. The program was approved, with conditions, by the Board in October 1995. Under BSB's MOU schedule, the District will submit a petition for the creation of a ground water control area for the Site in January, 1996. Within one hundred and twenty (120) days of the Effective Date of this Consent Decree, the Settling Defendants' shall meet and confer with BSB on this matter, and shall use their best efforts to establish the ground water use restrictions described in the 1993 Record of Decision. The plan for establishing the restrictions in accordance with the

1993 Record of Decision shall be presented to EPA and the State for approval.

iv. On or before August 1, 1996, the Settling Defendants shall pay to BSB the sum of $230,000.00 to be held and used by BSB for costs related to its implementation of institutional controls and maintenance of property at the Site. The payment of this sum shall be made by the Settling Defendants according to their respective percentage shares set forth in Paragraph 7 (i.e., ARCO shall pay $169,487.00; BNRR shall pay $48,415.00; MRI shall pay $12,098.00). Each Settling Defendant shall submit a proof of payment notice to the United States and the State upon payment.

v. The best efforts described above do not include events arising from causes beyond the control of the Settling Defendants, including, but not limited to, actions or inactions of any local or state governmental entities or owners of property at or near the Site which are outside the control of the Settling Defendants.

vi. In coordination with these efforts, the United States will pursue the implementation of appropriate use restrictions on Site property at or near the Site owned by MPTP, Torger L. Oaas, T. Eric Oaas, and Martha Oaas. The Settling Defendants shall cooperate with the United States in this regard.

vii. Settling Defendants and EPA/DEQ shall respectively issue quarterly progress reports to each other describing their

respective efforts in accomplishing the obligations described in Paragraphs 40 a(i) through (vi).

viii. In addition to other grounds, failure to implement the institutional controls described above may be a basis for EPA and the State to issue an Explanation of Significant Differences or ROD amendment for the Site, in accordance with CERCLA, CECRA, and the NCP. Alternatively, EPA and the State shall be entitled, in accordance with CERCLA, CECRA, and the NCP, to seek specific performance of Settling Defendants' obligations, as described in Paragraphs 40 a(i) through (iv), to obtain implementation of the Institutional Controls or to arrange for implementation of the Institutional Controls by any reasonable means or agreement and to recover the costs thereof from the Settling Defendants.

XIX. FORCE MAJEURE

41. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of a Settling Defendant, of any entity controlled by a Settling Defendant, or of the Settling Defendant's contractors when acting under a Settling Defendant's contract, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the

potential Force Majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability of the Settling Defendants to make payments as required under the terms of this Consent Decree.

42. If any Force Majeure event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's and the State's Project Coordinators or, in their absence, the ARA, EPA Region VIII, or his successor, and the Superfund Program Manager for DEQ, within ten (10) days of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a Force Majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure event. Failure to comply with the

above requirements shall preclude Settling Defendants from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. A Settling Defendant shall be deemed to know of any circumstance of which the Settling Defendant, any entity controlled by the Settling Defendant, or Settling Defendant's contractors when acting under the Settling Defendants' contracts, knew or should have known.

43. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, 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, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a Force Majeure event, EPA will notify the Settling Defendants in writing of the

length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

44. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 42 and 43, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree.

XX. CONFIDENTIAL BUSINESS INFORMATION AND PRIVILEGED DOCUMENTS

45. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the United States and the State under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b), or, as to the State, as otherwise provided by law. Documents or information determined by EPA to be

confidential under the standards of CERCLA Section 104(e)(7), 42 U.S.C. § 9607(e)(7) and 40 C.F.R. § 2.203(b), will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. Documents determined to be confidential by the State will be afforded protection as provided by law. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the United States, or the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that part or all of documents, records and other information is privileged under the attorney-client privilege or any other privilege or protection recognized by federal or state law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide EPA and the State with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege or protection asserted. However, no documents, reports or other

information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other portions of documents or information evidencing factual conditions at the Site. Claims of confidentiality, privilege or any other protections recognized by federal or state law may be asserted, if applicable, as to analysis or interpretation of such data.

d. This Section shall not apply to documents or information generated for any natural resource damages action, suits or claims, including, but not limited to, State of Montana v. ARCO, (CV 83-317-HLN-PGH), or generated for United States v. ARCO, et al., (CV 89-39-BU-PGH).

XXI. RETENTION OF RECORDS

46. Until six (6) years after the Effective Date of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate or document retention policy to the contrary. Such records and documents may be

retained in an electronic or microfilm format, and the obligation to retain or produce such records and documents under this Section shall not apply to exact duplicates of the records or documents.

47. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to the requesting party, except for any document, record, or other information that was already provided to the requesting party or is privileged under the attorney-client privilege or any other privilege or protection recognized by federal or state law. If Settling Defendants assert such a privilege or protection, they shall provide the requesting party with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege or protection asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

48. Each of the Settling Defendants hereby 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, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing by the United States of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e) regarding the Site.

XXII. NOTICES AND SUBMISSIONS

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

As to the United States:

Bruce Gelber
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: 90-11-2-429

As to EPA:

D. Henry Elsen
U.S. EPA, Montana Office
301 South Park
Federal Building-Drawer 10096
Helena, MT 59624

James Harris (Project Coordinator)
U.S. EPA, Montana Office
301 South Park
Federal Building-Drawer 10096
Helena, MT 59624

As to the State:

William B. Kirley
Legal Counsel, Environmental Remediation Division
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Brian Antonioli (Project Coordinator)
State Project Officer
Environmental Remediation Division
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

As to ARCO:

Sandra M. Stash
Manager, Montana Facility
First Security Bank Building
Suite 400
307 East Park Street
Anaconda, Montana 59711

Sherry M. Purdy, Esq.
Senior Attorney
Atlantic Richfield Company
555 Seventeenth Street
16th Floor
Denver, Colorado 80202

As to BNRR:

Leo Berry, Esq.
Browning, Kaleczyc, Berry, and Hoven, P.C.
139 North Last Chance Gulch
P.O. Box 1697
Helena, Montana 59624

Melvin L. Burda, Director
Environmental Field Operations
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

Pam Nehring, Esq.
Law Department
Burlington Northern Santa Fe Railroad
1700 Golf Road
Schaumburg, Illinois 60173

As to MRI:

Rebecca Summerville, Esq.
Datsoupoulos, McDonald, and Lind
Central Square Building
201 West Main Street
Missoula, Montana 59802

Dorn Parkinson, President
Montana Resources, Inc.
P.O. Box 8182
Missoula, Montana 59807

As to Weston:

Office of General Counsel
Roy F. Weston, Inc.
One Weston Way
West Chester, Pennslyvania 19380

As to Riedel:

W.D. Nelson, Executive Vice President
Riedel Environmental Services, Inc.
12750 Merit Drive, Suite 1166
Dallas, TX. 75251

Christopher W. Anguis
Perkins Coie
1211 SW 5th Avenue
Suite 1500
Portland, OR. 97204

XXIII. RETENTION OF JURISDICTION

50. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties 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 VIII (Dispute Resolution) hereof.

XXIV. MODIFICATIONS

51. No modifications shall be made to this Consent Decree without written notification and written approval of the United States, the State, and the Settling Parties or by order of the Court.

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

XXV. APPENDICES

53. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the United States' estimated calculation of the cost of the remedy as set forth in the 1993 Record of Decision; "Appendix B" is the 1993 Record of Decision; and "Appendix C" is a map of the Site with narrative description.

XXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

54. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice and Settling Parties will not oppose the terms of or discourage the entry of this Consent Decree during

the public comment period, unless the United States and the State have notified the Settling Parties in writing that they no longer support entry of the Consent Decree.

55. The State shall file its complaint and the United States shall file its amended complaint, as described in Section I, Paragraph R, within twenty (20) days of the Parties' lodging of this Consent Decree. The United States' amended complaint and the State's complaint shall be accepted by the Court for filing in this Consolidated Litigation in the event the Court approves and enters this Consent Decree. The Parties shall not be deemed to have waived any defenses or objections to the State's complaint by not answering, objecting to, or otherwise responding to such pleading. If this Consent Decree is not entered by the Court, the State's complaint shall not be accepted for filing in this Consolidated Litigation, and the State shall not be deemed to have submitted itself to the jurisdiction of the Court, and the Parties shall not be deemed to have waived any defenses or objections to the State's being added as a party to this action.

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

XXVII. SIGNATORIES/SERVICE

57. The undersigned representatives of the Settling Parties to this Consent Decree, the State, and the United States each

certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

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

SO ORDERED THIS 16 DAY OF January, 1996.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oass, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR THE UNITED STATES OF AMERICA

Date: 3/3/96

/s/

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Sherry Scheel Mateucci
United States Attorney
P.O. Box 1478
Billings, MT 59103

John Moscato/emm

John N. Moscato
Vincent J. Horn, Jr.
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division U.S. Department of Justice
999 18th Street, Suite 945N Denver, CO 80202

Max H. Dodson
Assistant Regional Administrator
Ecosystems Protection and
Remediation, Region VIII
U.S. Environmental Protection
Agency
999 18th Street, Suite 500
Denver, Colorado 80202

D. Henry Elsen, Attorney
Legal Enforcement Program
U.S. Environmental Protection
Agency
Region VIII, Montana Office
301 South Park Street
Helena, Montana 59626

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oass, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR THE STATE OF MONTANA

Date: 12-20-95

Marc Racicot
Governor of Montana
Capitol Station
Helena, Montana 59620

William B. Kirley
Legal Counsel
Environmental Remediation Division
Montana Department of
Environmental Quality
P.O. Box 200901
Helena. Montana 59620-0901

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oass, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR BURLINGTON NORTHERN RAILROAD COMPANY

Date: 1/16/96

By: J. R. Moreland

Jeffrey R. Moreland
Senior Vice President and
General Counsel
Burlington Northern Santa
Fe Corporation
1700 East Golf Road
Schaumburg, Illinois 60173

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

CT Corporation System
P.O. Box 1166
Helena, MT 59624

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oaas, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR ATLANTIC RICHFIELD COMPANY

Date: January 19, 1996

By: Sandra M. Stash

Sandra M. Stash
Manager, Montana Facility
First Security Bank Building
Suite 400
307 East Park Street
Anaconda, Montana 59711

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

Sherry M. Purdy, Esq.
Senior Attorney
Atlantic Richfield Company
555 Seventeenth Street
16th Floor
Denver, Colorado 80202

The Corporation Trust Company of California
CT Corporation System
818 West Seventh Street
Los Angeles, California 90017

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oass, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR MONTANA RESOURCES, INCORPORATED; INLAND PROPERTIES, INCORPORATED; AND DENNIS R. WASHINGTON

Date: 2/8, 1996

Dorn Parkinson, President
Montana Resources, Inc.

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

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oass, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR ROY F. WESTON, INCORPORATED

Date: Dec. 8th, 1995 By: _____

Donald B. Bauer
Assistant and General Counsel

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

The Prentice-Hall Corporation System, Inc.
26 West Sixth Avenue
Helena, MT 59601

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Montana Pole and Treating Plant, et al. and ARCO v. Oass, et al., relating to the Montana Pole and Treating Plant Superfund Site, Consolidated Civil Action Nos. 91-82-BU-PGH and 90-75-BU-PGH.

FOR RIEDEL ENVIRONMENTAL SERVICES, INC.

Date: December 11, 1995 By: _____

W.D. Nelson
Executive Vice President
Riedel Environmental Services, Inc.
12750 Merit Drive
Suite 1166
Dallas, Texas 75251

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

CT Corporation System
520 S.W. Yamhill, Suite 800
Portland, Oregon 97204