

SITE-SPECIFIC SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JULY 1996

TABLE OF CONTENTS

	Page
I. DEFINITIONS	1
II. TERM OF AGREEMENT	1
III. IMPLEMENTATION OF REMEDY/DISPUTE RESOLUTION	1
IV. USE OF SETTLEMENT ACCOUNT PROCEEDS FOR COMPLETION OF REMEDIAL ACTION AND O&M	2
V. FUNDING OF COST OVERRUNS	3
VI. RECORDKEEPING	4
VII. ADDITIONAL CONDITIONS	4
Submission of Technical and Procurement Documents	5
EPA Review and Approval/Change Orders	5
Negation of Agency Relationship	5
Exclusion of Third Parties	6
Response Actions During a Remedial Project	6
CERCLA Health-related Activities	6
Activities Prohibited by State Laws	6
MBE/WBE Utilization	6
Off-site Shipment	7
Certification of Completion	7
Consistency with the NCP	7
Site Access	8
No Waiver	8

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SITE-SPECIFIC SUPERFUND
MEMORANDUM OF AGREEMENT

This agreement is made and entered into by the United States Environmental Protection Agency ("EPA") and the State of Montana Department of Environmental Quality ("DEQ") pursuant to 40 CFR § 300.505(d)(3). The EPA and DEQ are parties to a Consent Decree which has been entered in the consolidated actions US v. Montana Pole and Treating Plant, et al., Civ. Action No. 91-82-BU-PGH, and Atlantic Richfield Company v. Torger L. Oaas, et al., Civ. Action No. 90-75-BU-PGH, in the United States District Court for the District of Montana, Butte Division. A copy of the Consent Decree is attached as Exhibit A hereto and is incorporated by reference herein. The Consent Decree was entered into in order to settle a portion of the above referenced litigation and to provide funds for the implementation of remedial action ("RA") and operation and maintenance ("O&M") activities set forth in the Record of Decision for the Montana Pole and Treating Plant NPL Site (the "Site"). This agreement is made between EPA and DEQ in order to provide a mutually acceptable arrangement for the two agencies to manage and coordinate the implementation of the RA and O&M with the funds provided through the settlement.

Accordingly, in consideration of the mutual covenants and benefits set forth herein, EPA and DEQ hereby agree as follows:

I. DEFINITIONS

1. Terms defined in the Consent Decree shall have the same meaning when used in this Memorandum of Agreement.

II. TERM OF AGREEMENT

2. This agreement and all rights and obligations hereunder are contingent upon and shall be effective upon the approval and entry of the Consent Decree by the court in the above referenced action.

3. The term of this agreement shall be that period actually required to complete the remedial action and operation and maintenance at the Site, initially estimated at approximately thirty years from the date of this agreement, unless otherwise mutually agreed in writing by EPA and DEQ.

III. IMPLEMENTATION OF REMEDY/DISPUTE RESOLUTION

4. The State shall be the lead agency for implementation and operation and maintenance of the remedial action. If the State determines that it is unable for any reason to continue as lead agency for remedial action implementation, it will so notify EPA in writing, with no less than sixty (60) days advance notice, and shall cooperate to the fullest extent possible with EPA in any necessary transition of lead agency status and in the completion of the action.

5. EPA and DEQ will cooperate to the fullest extent possible to maximize the use of the resources available for the successful completion of the remedial action, including long term

operation and maintenance activities. In the event of disagreements between the agencies, the agencies agree to negotiate a mutually acceptable resolution of the issues to the fullest extent possible.

6. When a dispute has arisen and cannot be resolved at the project officer/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and DEQ shall have 14 days to resolve the dispute informally. At the end of the 14 day informal dispute period, if the dispute is not resolved, the disputing party shall again state the dispute in writing in a letter addressed to the Director of DEQ and the Office Director, EPA Region 8 Montana Office. The other party shall have 7 days to respond to this dispute letter. The Director and the Office Director shall then have 14 days to resolve the dispute. If, at the end of this 14 day period, the dispute cannot be resolved, all dispute letters and responses shall be forwarded to the Regional Administrator, EPA Region 8. He or she shall consult with the Director of DEQ concerning the dispute and shall issue a final determination within 14 days of receipt of the dispute letters. The decision of the Regional Administrator shall be final.

IV. USE OF SETTLEMENT ACCOUNT PROCEEDS FOR COMPLETION OF REMEDIAL ACTION AND O&M

7. DEQ shall arrange for the investment of funds in the Settlement Account by executing a Montana Short Term Investment Pool Participation Agreement with the Montana State Board of Investments in a form similar to that attached as Exhibit B hereto.

8. The funds in the Settlement Account shall be invested by the State Board of Investments in accordance with an Investment Policy Statement mutually agreed to by EPA and DEQ, which may allow portions of the funds to be invested in certain long term investments, as appropriate. The initial Investment Policy Statement is attached hereto as Exhibit C, and shall be in effect until modified as provided herein. Investment Policy Statements may be modified by the mutual agreement of EPA and DEQ, through submission of an agreed upon, revised Investment Policy Statement to the Board of Investments.

9. The State Board of Investments shall be entitled to fees, to be deducted from earnings, in accordance with the Board's standard policy on fees for investments managed by the Board. DEQ shall provide the Board at least 24 hours notice when Short Term Investment Pool units must be liquidated to provide cash.

10. Funds may be disbursed from the Settlement Account by DEQ to pay response costs for the Site in accordance with an approved annual budget estimate. Such budget estimates shall run from August 1 through July 31 of each year during the term of this agreement or such other periods as are agreed to by DEQ and EPA. Paragraph 19, "EPA Review and Approval/Change Orders," includes additional detail on authorized disbursements. DEQ will notify EPA of disbursements from the Settlement Account by providing reports similar to those submitted by DEQ for cooperative agreements with EPA, including accounting reports showing expenditures/disbursements from the account. The reports will present administrative expenses, contractual (construction oversight and construction) expenses, and account balances, in addition

to any other information being provided in the quarterly reports submitted under paragraph 22 of the Consent Decree. Such reports shall be submitted on a quarterly basis with expenses, etc. detailed by month.

11. DEQ shall disburse funds from the Settlement Account to EPA for EPA costs associated with remedial action or operation and maintenance at the Site. EPA will prepare an estimated yearly budget for each federal fiscal year for joint approval by EPA and DEQ, prior to the beginning of each federal fiscal year. On a yearly basis, at or following the federal fiscal year, EPA will provide an accounting of such costs to DEQ for reimbursement. DEQ will promptly arrange for reimbursement to EPA of such funds, in accordance with instructions contained in EPA's yearly request for reimbursement.

12. Initial remedial action activities were commenced at the Site by DEQ prior to August 1, 1996, through cooperative agreement funding of \$6,000,000.00 provided by EPA. The total amount drawn down by MDEQ from this cooperative agreement will be reimbursed to EPA from the Settlement Account. When settlement funds are received by DEQ in August 1996, DEQ will refund to EPA all funds drawn down from the cooperative agreement. The reimbursement should be made by electronic fund transfer. Payment should be made payable to EPA-Hazardous Substance Superfund and sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC- 68011008

To insure that the payment is properly recorded by EPA, the following information must be included with the transfer:

Site Name: Montana Pole
Site #: 8-69
Cooperative Agreement Number: V998471-01-0
Type of Payment: Repayment

Any remaining funds in the cooperative agreement will be deobligated and the cooperative agreement will be closed. To facilitate this process in a timely manner, the State agrees to provide EPA with a Final Financial Status Report for this cooperative agreement before August 16, 1996. In accordance with 40 CFR, Subpart O, Section 35.6670, this Final Financial Status Report must have no unliquidated obligations. Expenditures incurred on or after August 1, 1996, are to be funded from the Settlement Account rather than the cooperative agreement unless otherwise agreed by DEQ and EPA in writing.

V. FUNDING OF COST OVERRUNS

13. In the event that additional funding is required for completion of the remedial action or operation and maintenance, the Consent Decree provides that the United States and the State must

bear the first \$6,000,000.00 in cost overruns. If CERCLA requires, at the time of incurrence of the cost overrun, that the State shall bear a portion of the costs for such actions, the State shall be responsible for ensuring its cost share as provided by this agreement and applicable law.

14. Funds in the Settlement Account shall be allocated between remedial action implementation costs and operation and maintenance costs. The initial allocation of funds between RA and O&M is shown on the attached Exhibit D, which shows the breakdown of funds based on the currently anticipated budget and schedule. This breakdown and any ultimate breakdown used by the agencies shall, in accordance with current Section 104(c)(6) of CERCLA, treat the period of up to ten years after the installation and commencement of operation of the treatment system necessary to restore groundwater at the Site as remedial action, rather than operation and maintenance. The agencies agree that the budgeting and designation of costs between RA and O&M costs shall be calculated and adjusted, if necessary, to reduce the State cost share to the smallest amount possible under this agreement and applicable law, and the State shall not be responsible for any additional amount.

15. Expenditures will be tracked by remedial action and operation and maintenance costs so that the appropriate cost share percentage, if any, may be properly identified. The apportionment between the two agencies will be borne in accordance with the cost share provisions in effect under CERCLA at the time of incurrence of the cost overrun. However, in no event will the cost share percentage for the state for remedial action costs exceed 10% of the cost overrun attributable to remedial action costs, i.e., the cost share percentage specified in the NCP for remedial action costs at the time of execution of this agreement.

VI. RECORDKEEPING

16. DEQ shall maintain records for the Settlement Account and expenditures therefrom in accordance with the requirements of paragraph 10.b of the Consent Decree and in a manner similar to that required for cooperative agreements as specified in 40 CFR § 35.6705. Such records shall be subject to inspection and/or audit by EPA at any time. DEQ may require that portions of these records be maintained by the contractors performing activities at the Site.

17. Various site-related records are maintained by EPA and DEQ as required by law and as required by the terms of the Consent Decree. In some circumstances, records are maintained solely by one of these agencies. EPA and DEQ will cooperate to the maximum extent possible in coordinating and providing each other copies of or access to records upon written request by either agency. Access to such records may include necessary agreements for maintaining confidentiality of certain documents or records, if appropriate.

VII. ADDITIONAL CONDITIONS

Several of the requirements specified above parallel conditions of the cooperative agreement which initially funded remedial action work at the Site. The following provisions are included in this memorandum of agreement to ensure consistency with the original cooperative agreement terms.

18. Submission of Technical and Procurement Documents

DEQ agrees to submit all draft and final plans, reports, specifications, and/or recommendations to the EPA RPM for review and concurrence prior to issuance or implementation, to ensure technical adequacy and consistency with the terms of the Record of Decision, the Consent Decree and this Agreement. Final subagreement documents or plans and subagreement changes shall be submitted to the EPA RPM prior to issuance for review to ensure compliance with the terms of the Record of Decision, the Consent Decree and this Agreement. Prior to beginning Remedial Action field work, DEQ will prepare specific work plans and will submit these plans to the EPA RPM for review. No field activities at the site shall occur under a work plan until EPA has approved the work plan and the plan is finalized.

19. EPA Review and Approval/Change Orders

DEQ, or its authorized agent(s), shall conduct technical and administrative reviews of any contract change order requests or claims. These reviews shall examine the technical basis for the change orders or claims and shall determine whether the requested changes are merited. Copies of contract change order requests and the results of the State's or its agents' independent estimates, technical and administrative reviews with resulting justifications shall be provided to the EPA with the quarterly progress reports. In accordance with EPA Guidance: Procurement Under Superfund Remedial Cooperative Agreements, OSWER Directive 9375.1-11 (June 1988), page VI-11, DEQ is delegated the authority to approve any change orders which total 20% or less of the construction contingency fund and aggregate change orders which total up to 75 percent of the construction contingency fund. Individual change order requests which exceed 20 percent of the amount of the construction contingency amount, or requests which would result in total project change orders exceeding 75 percent of the construction contingency amount, along with any associated documentation, shall be provided within three working days of receipt to the EPA and must be jointly approved by the RPM and the State Project Officer. The EPA shall respond to this documentation within the time frame specified by DEQ in the correspondence. If the EPA does not approve the change order, it shall be subject to Dispute Resolution as provided in Section III hereof.

20. Negation of Agency Relationship

Nothing contained in this agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and DEQ. Any standards, procedures, or protocols prescribed in this Agreement to be followed by DEQ during the performance of its obligations under this Agreement are to assure the quality of the final product of the actions contemplated by this agreement, and do not constitute a right to control the actions of DEQ. EPA (including its employees and contractors) is not authorized to represent or act on behalf of DEQ in any matter relating to this agreement, and DEQ (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to this Agreement. Neither EPA nor DEQ shall be liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other party entered into, committed, or performed with respect to or in the performance of this Agreement.

21. Exclusion of Third Parties

This agreement extends no benefit or rights to any party not a signatory. In addition, EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 USC Sections 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

22. Response Actions During a Remedial Project

Any response activities conducted pursuant to the NCP, 40 CFR Section 300.415, shall not be restricted by the terms of this Agreement. EPA and DEQ may jointly suspend or modify the remedial activities under this Agreement during and subsequent to necessary response actions.

23. CERCLA Health-related Activities

DEQ agrees that no human subject testing or health effects analyses may be funded under this Agreement. Any CERCLA health-related activities must be coordinated with the United States Department of Health and Human Services, pursuant to Sections 104(b) and 104(i) of CERCLA.

24. Activities Prohibited by State Laws

In the event that DEQ determines after execution of this Memorandum of Agreement that State laws or other restrictions prevent DEQ from acting consistent with CERCLA, as amended by SARA, the State must agree to promptly notify and consult with EPA regarding the use of such laws or other restrictions.

25. MBE/WBE Utilization

DEQ must ensure to the fullest extent possible that at least 8% of Federal funds (with an equitable distribution between MBE and WBE business enterprises) for prime contracts or subcontracts for supplies, construction, equipment and/or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities.

DEQ agrees to include in its bid documents an 8% "Fair Share" (distributed equitably between MBE and WBE business enterprises) and require all of its prime contractors to include in their bid documents for subcontracts an 8% "Fair Share" (distributed equitably between MBE and WBE business enterprises) percentage.

To evaluate compliance with the "Fair Share" policy, DEQ also agrees to comply with the six affirmative steps stated in 40 CFR 33.240, 31.36(e) or 35.6580(a) as appropriate.

DEQ agrees to submit an SF-334 "MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and other Federal Financial Assistance," to the Grants, Audits and Contracts Branch

beginning with the Federal fiscal year quarter DEQ awards its first contract and continuing until all contracts and subcontracts have been reported. These reports must be submitted within one month following the end of each Federal fiscal year (i.e., January 31, April 30, July 31, and October 31).

26. Off-site Shipment

EPA shall provide clear and specific authority to DEQ authorizing DEQ, or its designated agent(s), to sign uniform hazardous waste manifest forms (40 CFR) "manifests", and "bills of lading" on behalf of EPA. DEQ, or its designated agent(s), shall sign the appropriate manifest after writing or printing in the phrase "On behalf of the United States Environmental Protection Agency" in the signature block of the manifest. Neither DEQ nor its designated agent(s) shall be considered a generator of hazardous waste solely as a result of having signed the manifests or bills of lading on behalf of the EPA.

Further, as required by 40 CFR Section 35.6120, DEQ will provide written notification prior to the off-site shipment of waste from the Site to an out-of-state waste management facility, to the appropriate state environmental official for the State in which the waste management facility is located, and/or the appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located, and the EPA award official.

27. Certification of Completion

EPA and DEQ shall conduct a joint prefinal construction completion inspection. The prefinal inspection shall consist of a walk-through inspection of the entire project site and shall survey the completed work, determining whether the project is complete and consistent with the contract documents and the EPA approved remedy. EPA and DEQ shall determine if there are any outstanding construction items. The Contractor(s) shall have certified that the work has been performed to meet the purpose and intent of the design specifications. Retesting shall have been successfully completed where deficiencies were revealed. Based on the inspection, DEQ will develop a prefinal inspection report which will include a checklist of any outstanding items that need to be corrected/completed. This report will be submitted to EPA and EPA will provide comments to DEQ within 5 working days. All EPA comments will be attached to the prefinal report and addressed to the maximum extent practicable. Once DEQ and EPA determine that all items in the prefinal inspection report have been satisfactorily addressed by the RA contractor, a final inspection will be conducted. EPA and DEQ will jointly conduct the final inspection.

DEQ through its oversight contractor shall compile and submit a final construction completion report in accordance with EPA regulations and guidance.

28. Consistency with the NCP

All activities conducted under this agreement shall be consistent with the revised NCP, 40 CFR Part 300. EPA and DEQ also intend to follow all appropriate EPA policy and guidance.

29. Site Access

DEQ has authority for Site access pursuant to Section 104(e)(1) of CERCLA.

30. No Waiver

Execution of this agreement shall not constitute a waiver of any Party's right to bring an action against any person or persons for liability under CERCLA or any other statutory provision or common law.

MONTANA DEPARTMENT OF ENVIRONMENTAL
QUALITY

7/31/96
Date

By: Mark A. Simonich
Mark Simonich, Director

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

8/13/96
Date

By: John F. Wardell
John F. Wardell, Director
Montana Office
EPA Region VIII

Attachments:

- Exhibit A: Consent Decree
- Exhibit B: Montana Short Term Investment Pool Participation Agreement Form
- Exhibit C: Initial Investment Policy Statement
- Exhibit D: Initial Estimated Budget and RA/O&M Allocation

Exhibit A

Consent Decree

FILED 698

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

CLERK
MAR - 7 1996
Marilyn Kelley

UNITED STATES OF AMERICA,

Plaintiff,

Clerk, U. S. District Court
District of Montana
HELENA

CONSOLIDATED
Civil Action No.

v.

91-82-BU-PGH

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

Defendants.

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.

Civil Action No.

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,

90-75-BU-PGH

Defendants.

1 BURLINGTON NORTHERN RAILROAD
2 COMPANY

3 Third Party Plaintiff,

4 v.

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

8 Third Party Defendants.

9 CONSENT DECREE

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TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	10
III.	<u>NO ADMISSION OF LIABILITY</u>	10
IV.	<u>PARTIES BOUND.</u>	11
V.	<u>DEFINITIONS.</u>	11
VI.	<u>REIMBURSEMENT OF RESPONSE COSTS.</u>	17
VII.	<u>ADDITIONAL RESPONSE COST REOPENER.</u>	22
VIII.	<u>DISPUTE RESOLUTION</u>	25
IX.	<u>SETTLEMENT ACCOUNT</u>	30
X.	<u>FAILURE TO MAKE TIMELY PAYMENTS.</u>	33
XI.	<u>COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE.</u>	34
XII.	<u>THE UNITED STATES' AND THE STATE'S PRE-CERTIFICATION RESERVATIONS</u>	36
XIII.	<u>THE UNITED STATES' AND THE STATE'S POST-CERTIFICATION RESERVATIONS.</u>	38
XIV.	<u>COVENANTS AND RELEASES BY SETTLING DEFENDANTS AND OTHER PARTIES.</u>	42
XV.	<u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION.</u>	49
XVI.	<u>SITE ACCESS.</u>	51
XVII.	<u>ACCESS TO INFORMATION.</u>	52
XVIII.	<u>INSTITUTIONAL CONTROLS</u>	53
XIX.	<u>FORCE MAJEURE.</u>	58
XX.	<u>CONFIDENTIAL BUSINESS INFORMATION AND PRIVILEGED DOCUMENTS.</u>	61
XXI.	<u>RETENTION OF RECORDS</u>	63
XXII.	<u>NOTICES AND SUBMISSIONS.</u>	65
XXIII.	<u>RETENTION OF JURISDICTION.</u>	67
XXIV.	<u>MODIFICATIONS.</u>	68
XXV.	<u>APPENDICES</u>	68

1 XXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 68

2 XXVII. SIGNATORIES/SERVICE. 69

3
4
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2 I. BACKGROUND

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

13 B. The United States of America ("United States") asserts
14 that, between 1983 and 1993, in response to a release or
15 substantial threat of release of hazardous substances at or from
16 the Site, the United States Environmental Protection Agency
17 ("EPA") conducted a series of response actions at the Site
18 pursuant to Section 104 of the Comprehensive Environmental
19 Response, Compensation, and Liability Act, as amended ("CERCLA"),
20 42 U.S.C. § 9604, and EPA's removal authority. These actions
21 included, but are not limited to, the excavation and storage of
22 contaminated soils; fencing; construction of groundwater
23 interception, recovery, and treatment systems; and various
24 engineering studies. The United States asserts that EPA
25 contracted with Roy F. Weston, Incorporated ("Weston") and Riedel
26 Environmental Services, Inc. ("Riedel") to assist EPA in
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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

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

6 F. The United States, on behalf of EPA, filed a complaint
7 in this matter styled as United States v. MPTP, et al. (CV 91-
8 082-BU-PGH) alleging causes of action pursuant to Sections 107
9 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607 and 9613(g)(2),
0 against MPTP, Torger L. Oaas, ARCO, and Burlington Northern
1 Railroad Company ("BNRR") on October 9, 1991. The United States
2 alleged that MPTP and Torger L. Oaas were past and present owners
3 and operators of the Site, and alleged that ARCO and BNRR were
4 past and/or present owners of portions of the Site. On October
5 24, 1991, technical amendments were made in the United States'
6 First Amended Complaint. On May 25, 1993, the United States, by
7 a Second Amended Complaint, added Inland Properties, Inc. as a
8 defendant in the foregoing action and alleged that Inland
9 Properties, Inc. is a present owner of a portion of the Site.

0 G. The United States in its complaint, as amended, seeks
1 reimbursement of response costs incurred and to be incurred by
2 the United States for response actions in connection with the
3 release or threatened release of hazardous substances, and a
4 declaration of the named defendants' liability for further
5 response costs at the Site. In its answer to the First Amended
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1 Complaint of the United States dated November 22, 1991, ARCO
2 asserted a claim in recoupment against the United States.

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

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

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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

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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

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.,

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

3 n. "National Contingency Plan" or "NCP" shall mean the
4 National Oil and Hazardous Substances Pollution Contingency Plan
5 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
6 codified at 40 C.F.R. Part 300, and any amendments thereto.

7 o. "Operation and Maintenance" or "O&M" shall mean all
8 activities required to maintain the effectiveness of the Remedial
9 Action as required under the Operation and Maintenance Plan to be
0 developed for the Site.

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

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

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

2 s. "RCRA" shall mean the Solid Waste Disposal Act, as
3 amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource
4 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; ENRR- 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

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

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

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

23 c. The Settling Defendants shall pay the exceedence of
24 the "Cost Reopener Amount" in accordance with their respective
25 percentage shares as set forth in Paragraph 7, as demanded by the
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1 United States and the State. Within 120 days after receipt of
2 the demand, each Settling Defendant will pay or dispute the sum
3 demanded of it. However, if the United States and the State have
4 not yet actually incurred expenses in excess of the Cost Reopener
5 Amount, each Settling Defendant shall, within 120 days of demand,
6 either dispute or agree to pay the Settling Defendant's
7 respective share of the requested sum, and the obligation to
8 submit payment shall be tolled until the Cost Reopener Amount has
9 actually been exceeded. Failure to dispute the payment of such
10 sums within the allotted time shall be deemed an agreement to pay
11 such sums. In the event a demand is presented under this Section
12 and is disputed by the Settling Defendant(s), Settling
13 Defendant(s) reserve all rights to challenge this demand, as
14 provided in Paragraph 33 h. of this Consent Decree.

15 **VIII. DISPUTE RESOLUTION**

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

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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

1 will serve on Settling Defendants a Statement of Position,
2 including, but not limited to, any factual data, analysis, or
3 opinion supporting that position and all supporting documentation
4 relied upon by EPA and the State. This Statement of Position
5 shall include a statement as to whether formal dispute resolution
6 should proceed under Paragraph 14 or 15. Within fourteen (14)
7 days after receipt of EPA's and the State's Statement of
8 Position, Settling Defendant(s) may submit a reply.

9 c. If there is disagreement as to whether dispute
10 resolution should proceed under Paragraph 14 or 15, the parties
11 to the dispute shall follow the procedures set forth in the
12 paragraph determined by EPA to be applicable. However, if the
13 Settling Defendants ultimately appeal to the Court to resolve the
14 dispute, the Court shall determine which paragraph is applicable
15 in accordance with the standards of applicability set forth in
16 Paragraphs 14 and 15.

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

24 a. An administrative record of the dispute shall be
25 maintained by EPA and shall contain all statements of position,
26 including supporting documentation, submitted pursuant to this
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1 Section, and in the event of a dispute regarding reopeners under
2 Sections XII (Pre-Certification Reservations) and XIII (Post-
3 Certification Reservations), EPA and State records regarding
4 information and conditions known under Paragraph 31 shall be
5 deemed included in the administrative record for the dispute.
6 Where appropriate, EPA may allow submission of supplemental
7 statements of position by the parties to the dispute.

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

15 c. Any administrative decision made by EPA pursuant to
16 Paragraph 14 b. shall be reviewable by this Court, provided that
17 a motion for judicial review is filed by the Settling
18 Defendant(s) with the Court and served on all Parties within
19 twenty (20) days of receipt of EPA's decision. The motion shall
20 include a description of the matter in dispute, the efforts made
21 by the Parties to resolve it, the relief requested, and the
22 schedule, if any, within which the dispute must be resolved to
23 ensure orderly implementation of this Consent Decree. The United
24 States and/or the State may file a response to Settling
25 Defendants' motion within twenty (20) days of the receipt of the
26 motion.

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1 d. In proceedings on any dispute governed by this
2 Paragraph, Settling Defendants shall have the burden of
3 demonstrating that the decision of the ARA is arbitrary and
4 capricious or otherwise not in accordance with law. Judicial
5 review of EPA's decision shall be on the administrative record
6 compiled pursuant to Paragraph 14 a.

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

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

14 17. As to any disputes solely between or among the Settling
15 Parties arising under or with respect to this Consent Decree, the
16 party or parties to the dispute may file with the Court and serve
17 upon the United States, State and Settling Parties, a motion for
18 judicial review of the dispute setting forth the matter in
19 dispute, the efforts made by the Parties to resolve it, the
20 relief requested, and the schedule, if any, within which the
21 dispute must be resolved to ensure orderly implementation of the
22 Consent Decree.

23 **IX. SETTLEMENT ACCOUNT**

24 18. All payments made by Settling Defendants described in
25 Paragraph 7 shall be paid to the United States and the State by
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1 deposit into a State special revenue account as provided for in
2 Mont. Code Ann. § 17-2-102(1)(a)(ii)(A), which shall be held and
3 maintained by the State in accordance with the requirements of
4 this Consent Decree (the "Settlement Account"). Payments shall
5 be made by EFT to First Bank Montana, Helena Branch, Bank Routing
6 No. 092900383, State Treasurer Account No. 15604100221,
7 specifying in the addendum, third party record, or similar
8 information field "DEQ/MT Pole;To:ADMIN/CENT.SERV." The party
9 making the payment is to contact the "Administrator, Centralized
10 Services Division," DEQ (telephone: (406) 444-2442), at least 48
11 hours prior to initiating the wire transfer to provide notice of
12 the date, time, and amount of the expected transfer and to
13 confirm the wiring instructions, bank routing, and account
14 numbers. Failure to provide such notice shall not subject the
15 Settling Defendants to stipulated penalties under Paragraph 25 of
16 this Consent Decree. Transfers received at the depository
17 institution after 2:00 p.m. Mountain Time will be credited to the
18 next working day.

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

23 20. Funds in the Settlement Account, including earnings,
24 shall be used by the State, together with EPA, for the purpose of
25 paying Future Response Costs at the Site and for no other
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1 purpose. For the purposes of Mont. Code Ann. § 17-2-111, or any
2 similar provision of law, no portion of the Settlement Account is
3 to be treated as State general fund money, nor is any portion to
4 be converted or transferred to the State general fund.

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

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

23 23. Except as provided in Paragraph 33 h., Settling
24 Defendants and their agents cannot contest or object to the
25 disbursements described above and such disbursements are not
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1 subject to the Dispute Resolution procedures described in Section
2 VIII or otherwise subject to judicial review.

3 X. FAILURE TO MAKE TIMELY PAYMENTS

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

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

23 26. If the United States or the State must bring an action
24 to collect any payment required by this Consent Decree, the
25 defaulting Settling Defendant(s) shall reimburse the United
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1 States and the State for all costs of such action, including but
2 not limited to costs of attorney time. Nothing in this Paragraph
3 is meant to affect or alter the Settling Defendants' reserved
4 rights and defenses under Paragraph 33 h.

5 27. Payments made under Paragraphs 24 and 25 shall be in
6 addition to any other remedies or sanctions available to EPA and
7 the State by virtue of a defaulting Settling Defendant('s)
8 failure to make timely payments required by this Consent Decree;
9 provided, however, that the United States or the State shall not
10 seek civil penalties pursuant to Section 122(1) of CERCLA, 42
11 U.S.C. § 9622(1), for any violation for which a stipulated
12 penalty is provided herein except in the case of a willful
13 violation of Paragraph 5 or 7 of this Consent Decree.
14 Notwithstanding any other provision of this Section, the United
15 States and the State may, in their unreviewable discretion, waive
16 any portion of stipulated penalties that have accrued pursuant to
17 this Consent Decree.

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

19 28. a. In consideration of the actions that will be
20 performed and the payments that will be made by the Settling
21 Defendants under the terms of the Consent Decree, and except as
22 provided in Paragraphs 10, 26, 29, 30, 32, and 40, the United
23 States covenants not to sue or to take administrative action
24 against Settling Defendants pursuant to Sections 106 and 107(a)
25 of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or Section 7003 of
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1 RCRA, 42 U.S.C. § 6973, relating to the Site. Except as provided
2 in Paragraphs 10, 29, and 30 with respect to future liability,
3 these covenants not to sue shall take effect upon the receipt of
4 Settling Defendants' respective payments, as described in
5 Paragraph 5. These covenants not to sue are conditioned upon the
6 complete and satisfactory performance by Settling Defendants of
7 their respective obligations under this Consent Decree. These
8 covenants not to sue extend only to the Settling Defendants and
9 do not extend to any other person.

10 b. In consideration of the actions that will be performed
11 and the payments that will be made by the Settling Defendants
12 under the terms of the Consent Decree, and except as provided in
13 Paragraphs 10, 26, 29, 30, 32, and 40, the State covenants not to
14 sue or to take administrative action against Settling Defendants
15 pursuant to Sections 106, 107(a), and 113(f)(1) of CERCLA, 42
16 U.S.C. §§ 9606, 9607(a), and 9613(f)(1), Sections 711, 715, and
17 719 of CECRA, Mont. Code Ann. §§ 75-10-711, 75-10-715, and 75-10-
18 719, or Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the
19 Site. Except as provided in Paragraphs 10, 29, and 30, with
20 respect to future liability, these covenants not to sue shall
21 take effect upon the payment of Settling Defendants' respective
22 payments, as described in Paragraph 5. These covenants not to
23 sue are conditioned upon the complete and satisfactory
24 performance by Settling Defendants of their respective
25 obligations under this Consent Decree. These covenants not to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 and these previously unknown conditions or this information
23 together with other relevant information indicate that the
24 Remedial Action is not protective of human health or the
25 environment. ARCO, BNRR, and MRI agree that in the event the
26 United States seeks additional costs of response, or orders

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

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

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

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

16 and these previously unknown conditions or this information
17 together with other relevant information indicate that the
18 Remedial Action is not protective of human health or the
19 environment. ARCO, BNRR, and MRI agree that in the event the
20 State seeks additional costs of response, or orders additional
21 action, such costs would be reimbursed on the basis of the
22 respective percentage shares of each Settling Defendant as set
23 forth in Paragraphs 7 and 8.

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

3 31. For purposes of Paragraph 29, the information and the
4 conditions known to EPA and the State shall include only that
5 information and those conditions known to the EPA and the State
6 as of the date the 1993 Record of Decision was signed and set
7 forth in the 1993 Record of Decision for the Site, the
8 administrative record supporting the 1993 Record of Decision, or
9 the record for the Site maintained by EPA following issuance of
10 the 1993 Record of Decision until the date of lodging of this
11 Consent Decree. For purposes of Paragraph 30, the information
12 and the conditions known to EPA and the State shall include only
13 that information and those conditions known to the EPA and the
14 State as of the date of Certification of the Completion of the
15 Remedial Action and set forth in the Record of Decision, the
16 administrative record supporting the 1993 Record of Decision, any
17 post-1993 Record of Decision administrative record, any 1993
18 Record of Decision amendment or Explanation of Significant
19 Differences, the record for the Site maintained by EPA and the
20 State following issuance of the 1993 Record of Decision, or in
21 any information received or discovered by EPA and the State
22 pursuant to the requirements of this Consent Decree prior to the
23 Certification of Completion of the Remedial Action. Further, for
24 purposes of Paragraphs 29 and 30, the information and the
25 conditions known to EPA are and shall be imputed to the State,
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1 and the information and the conditions known to the State are and
2 shall be imputed to EPA. For purposes of Paragraphs 29 and 30, a
3 failure of the Remedial Action or O&M, in and of itself, shall
4 not constitute an unknown condition or unknown information as
5 grounds for a reopener, unless it results from an unknown
6 condition or unknown information; nor shall information or
7 conditions received or discovered during the Remedial Design, or
8 the presence of or potential or actual migration of hazardous or
9 deleterious substances consisting of pentachlorophenol, PAHs,
10 TPHs, BTEX, dioxins, furans, or related constituents from the
11 MPTP operations at, on, or to the Silver Bow Creek/Butte Area Site
12 constitute an unknown condition or unknown information as grounds
13 for a reopener.

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

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

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

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1 (3) liability for damages for injury to, destruction
2 of, or loss of natural resources as provided in Section 107
3 of CERCLA, 42 U.S.C. § 9607, CECRA, Mont. Code Ann. § 75-10-
4 715, or any other federal or state law;

5 (4) criminal liability; and,

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

9 **XIV. COVENANTS AND RELEASES BY SETTLING DEFENDANTS**
10 **AND OTHER PARTIES**

11 33. a. Except as provided in Paragraphs 33b. and h. and
12 any proceedings permitted by this Consent Decree in Section VIII
13 (Dispute Resolution), Settling Defendants hereby covenant not to
14 sue and agree not to assert any claims or causes of action
15 against the United States with respect to the Site or this
16 Consent Decree, including, but not limited to: (i) any direct or
17 indirect claim for reimbursement from the Hazardous Substance
18 Superfund (established pursuant to the Internal Revenue Code, 26
19 U.S.C. § 9507), under CERCLA Sections 106(b)(2), 107, 111, 112,
20 or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or
21 any other provision of law; (ii) any claim against the United
22 States pursuant to CERCLA Sections 107 and 113; or (iii) any
23 claims arising out of response activities at the Site, including
24 claims based on EPA's selection of response actions. Nothing in
25 this Consent Decree shall be deemed to constitute
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1 preauthorization of a claim within the meaning of Section 111 of
2 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

3 b. The Settling Defendants specifically reserve, and this
4 Consent Decree is without prejudice to: (i) claims or causes of
5 action against the United States, subject to the provisions of
6 Chapter 171 of Title 28 of the United States Code, for money
7 damages for injury or loss of property or personal injury or
8 death caused by the negligent or wrongful act or omission of any
9 employee of the United States while acting within the scope of
10 his or her office or employment under circumstances where the
11 United States, if a private person, would be liable to the
12 claimant in accordance with the law of the place where the act or
13 omission occurred. However, any such claim shall not include a
14 claim for any damages caused by the act or omission of any person
15 who is not a federal employee as that term is defined in 28
16 U.S.C. § 2671; nor shall any such claim include a claim based on
17 EPA's selection of response actions, other than as provided in
18 Paragraph 33 h. The foregoing applies only to claims which are
19 brought pursuant to any statute other than CERCLA and for which
20 the waiver of sovereign immunity is found in a statute other than
21 CERCLA; (ii) any claim or cause of action against the United
22 States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and
23 9613, CECRA, or any other federal or state law for natural
24 resource damages, including, but not limited to, the litigation
25 styled as State of Montana v. ARCO (CV 83-317-HLN-PGH); (iii) any

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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

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

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

19 However, the Settling Defendants specifically reserve and
20 exclude from this Paragraph, and this Consent Decree is without
21 prejudice to, their right to bring against the State, including
22 its successors and assigns: (i) any claim or cause of action for
23 natural resource damages under CERCLA, CECRA, or any other
24 federal or state law, including, but not limited to, claims which
25 have been asserted by ARCO against the State in State of Montana
26 v. ARCO, (CV-83-317-HLN-PGH), in the U.S. District Court for the
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2 District of Montana; (ii) any claim or cause of action under
3 CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or CECRA,
4 Mont. Code Ann. § 75-10-715, in the event the United States or
5 the State asserts a claim or order against any of the Settling
6 Defendants pursuant to the provisions of Section VII (Additional
7 Response Cost Reopener) or Section XII (Pre-Certification
8 Reservations) or Section XIII (Post-Certification Reservations)
9 of this Consent Decree; and (iii) any claim or cause of action
10 under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or
11 CECRA, Mont. Code Ann. § 75-10-715, or common law arising out of
12 the off-Site disposal of Waste Materials.

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

4 However, ARCO and BNRR specifically reserve and exclude from
5 this release, and this Consent Decree is without prejudice to,
6 their right to bring any claim, counterclaim, including any claim
7 or cause of action under CERCLA Sections 107 and 113, 42 U.S.C.
8 §§ 9607 and 9613, or CECRA, Mont. Code Ann. § 75-10-715, or any
9 other cause of action against each other, their successors or
10 assigns arising out of the off-Site disposal of Waste Materials.

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

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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

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

4 34. Nothing in this Consent Decree shall be construed to
5 create any rights in, or grant any cause of action to, any person
6 not a Party to this Consent Decree. Each of the Parties
7 expressly reserves any and all rights (including, but not limited
8 to, any right to contribution), defenses, claims, demands, and
9 causes of action which each Party may have with respect to any
10 matter, transaction, or occurrence relating in any way to the
11 Site against any person not a Party hereto.

12 **XV. EFFECT OF SETTLEMENT-CONTRIBUTION PROTECTION**

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

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

12 36. The Settling Parties agree that, with respect to any
13 suit or claim for contribution brought by them for matters
14 related to the Site or this Consent Decree, except with respect
15 to any natural resource damages suits or claims filed or to be
16 filed, including, but not limited to, filings in State of Montana
17 v. ARCO, (CV 83-317-HLN-PGH), or with respect to United States v.
18 ARCO, et al., (CV 89-39-BU-PGH), they will notify the United
19 States and the State in writing no later than thirty (30) days
20 prior to the initiation of such suit or claim. Settling Parties
21 also agree that, with respect to any suit or claim for
22 contribution brought against them for matters related to the Site
23 or this Consent Decree, except with respect to any natural
24 resource damages suits or claims filed or to be filed, including,
25 but not limited to, filings in State of Montana v. ARCO, (CV 83-
26 317-HLN-PGH), or with respect to United States v. ARCO, et al.,

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(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

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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

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2 and the State, upon written request, copies of all documents and
3 information within their possession or control or that of their
4 contractors or agents relating to activities at the Site,
5 including, but not limited to, sampling, analysis, chain of
6 custody records, manifests, trucking logs, receipts, reports,
7 sample traffic routing, correspondence, or other documents or
8 information related to the Site. This Section does not
9 constitute or create an obligation to provide to the United
10 States and the State any documents and information with respect
11 to any natural resource damages action, suits or claims,
12 including, but not limited to, State of Montana v. ARCO, (CV 83-
13 317-HLN-PGH), or with respect to United States v. ARCO et al.,
14 (CV 89-39-BU-PGH).

15 **XVIII. INSTITUTIONAL CONTROLS**

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

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

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

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

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

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2 residential use applicable to the Site. Within one hundred and
3 twenty (120) days of the Effective Date of this Consent Decree,
4 the Settling Defendants' shall meet and confer with BSB on this
5 matter, and shall use their best efforts to establish the zoning
6 restrictions described in the 1993 Record of Decision. The plan
7 for establishing the zoning restrictions in accordance with the
8 1993 Record of Decision shall be presented to EPA and the State
9 for approval.

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

1 1993 Record of Decision shall be presented to EPA and the State
2 for approval.

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

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

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

24 vii. Settling Defendants and EPA/DEQ shall respectively
25 issue quarterly progress reports to each other describing their
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1 respective efforts in accomplishing the obligations described in
2 Paragraphs 40 a(i) through (vi).

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

14 **XIX. FORCE MAJEURE**

15 41. "Force Majeure," for purposes of this Consent Decree,
16 is defined as any event arising from causes beyond the control of
17 a Settling Defendant, of any entity controlled by a Settling
18 Defendant, or of the Settling Defendant's contractors when acting
19 under a Settling Defendant's contract, that delays or prevents
20 the performance of any obligation under this Consent Decree
21 despite the Settling Defendant's best efforts to fulfill the
22 obligation. The requirement that the Settling Defendants
23 exercise "best efforts to fulfill the obligation" includes using
24 best efforts to anticipate any potential Force Majeure event and
25 best efforts to address the effects of any potential Force
26 Majeure event (1) as it is occurring and (2) following the
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1 potential Force Majeure event, such that the delay is minimized
2 to the greatest extent possible. "Force Majeure" does not
3 include financial inability of the Settling Defendants to make
4 payments as required under the terms of this Consent Decree.

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

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

9 43. If EPA, after a reasonable opportunity for review
10 and comment by the State, agrees that the delay or anticipated
11 delay is attributable to a Force Majeure event, the time for
12 performance of the obligations under this Consent Decree that are
13 affected by the Force Majeure event will be extended by EPA,
14 after a reasonable opportunity for review and comment by the
15 State, for such time as is necessary to complete those
16 obligations. An extension of the time for performance of the
17 obligations affected by the Force Majeure event shall not, of
18 itself, extend the time for performance of any other obligation.
19 If EPA, after a reasonable opportunity for review and comment by
20 the State, does not agree that the delay or anticipated delay has
21 been or will be caused by a Force Majeure event, EPA will notify
22 the Settling Defendants in writing of its decision. If EPA,
23 after a reasonable opportunity for review and comment by the
24 State, agrees that the delay is attributable to a Force Majeure
25 event, EPA will notify the Settling Defendants in writing of the
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1 length of the extension, if any, for performance of the
2 obligations affected by the Force Majeure event.

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

18 **XX. CONFIDENTIAL BUSINESS INFORMATION AND PRIVILEGED**
19 **DOCUMENTS**

20 45. a. Settling Defendants may assert business
21 confidentiality claims covering part or all of the documents or
22 information submitted to the United States and the State under
23 this Consent Decree to the extent permitted by and in accordance
24 with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40
25 C.F.R. § 2.203(b), or, as to the State, as otherwise provided by
26 law. Documents or information determined by EPA to be
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1 confidential under the standards of CERCLA Section 104(e)(7), 42
2 U.S.C. § 9607(e)(7) and 40 C.F.R. § 2.203(b), will be accorded
3 the protection specified in 40 C.F.R. Part 2, Subpart B.
4 Documents determined to be confidential by the State will be
5 afforded protection as provided by law. If no claim of
6 confidentiality accompanies documents or information when they
7 are submitted to EPA, the United States, or the State, or if EPA
8 has notified Settling Defendants that the documents or
9 information are not confidential under the standards of Section
10 104(e)(7) of CERCLA, the public may be given access to such
11 documents or information without further notice to Settling
12 Defendants.

13 b. The Settling Defendants may assert that part or all
14 of documents, records and other information is privileged under
15 the attorney-client privilege or any other privilege or
16 protection recognized by federal or state law. If the Settling
17 Defendants assert such a privilege in lieu of providing
18 documents, they shall provide EPA and the State with the
19 following: (1) the title of the document, record, or
20 information; (2) the date of the document, record, or
21 information; (3) the name and title of the author of the
22 document, record, or information; (4) the name and title of each
23 addressee and recipient; (5) a description of the subject of the
24 document, record, or information; and (6) the privilege or
25 protection asserted. However, no documents, reports or other
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1 information created or generated pursuant to the requirements of
2 this Consent Decree shall be withheld on the grounds that they
3 are privileged.

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

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

17 **XXI. RETENTION OF RECORDS**

18 46. Until six (6) years after the Effective Date of this
19 Consent Decree, each Settling Defendant shall preserve and retain
20 all records and documents now in its possession or control or
21 which come into its possession or control that relate in any
22 manner to response actions taken at the Site or the liability of
23 any person for response actions conducted and to be conducted at
24 the Site, regardless of any corporate or document retention
25 policy to the contrary. Such records and documents may be
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1 retained in an electronic or microfilm format, and the obligation
2 to retain or produce such records and documents under this
3 Section shall not apply to exact duplicates of the records or
4 documents.

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

1 48. Each of the Settling Defendants hereby certifies,
2 individually, that to the best of its knowledge and belief, after
3 thorough inquiry, it has not altered, mutilated, discarded,
4 destroyed or otherwise disposed of any records, documents, or
5 other information relating to its potential liability regarding
6 the Site since notification of potential liability by the United
7 States or the State or the filing by the United States of suit
8 against it regarding the Site and that it has fully complied with
9 any and all EPA requests for information pursuant to Section
10 104(e) of CERCLA, 42 U.S.C. § 9604(e) regarding the Site.

11 **XXII. NOTICES AND SUBMISSIONS**

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

23 As to the United States:

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

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

3 As to EPA:

4 D. Henry Elsen
5 U.S. EPA, Montana Office
301 South Park
6 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

7 As to the State:

8 William B. Kirley
9 Legal Counsel, Environmental
Remediation Division
10 Montana Department of
Environmental Quality
11 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

12 As to ARCO:

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

17 Sherry M. Purdy, Esq.
Senior Attorney
18 Atlantic Richfield Company
555 Seventeenth Street
19 16th Floor
Denver, Colorado 80202

20 As to BNR:

21 Leo Berry, Esq.
22 Browning, Kaleczyc,
Berry, and Hoven, P.C.
23 139 North Last Chance Gulch
P.O. Box 1697
24 Helena, Montana 59624

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

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

4 As to MRI:

5 Rebecca Summerville, Esq. Datsoupoulos, McDonald, and Lind 6 Central Square Building 201 West Main Street 7 Missoula, Montana 59802	Dorn Parkinson, President Montana Resources, Inc. P.O. Box 8182 Missoula, Montana 59807
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8 As to Weston:

9 Office of General Counsel
Roy F. Weston, Inc.
10 One Weston Way
West Chester, Pennsylvania 19380

11 As to Riedel:

12 W.D. Nelson, Executive Vice President 13 Riedel Environmental Services, Inc. 12750 Merit Drive, Suite 1166 14 Dallas, TX. 75251	Christopher W. Anguis Perkins Coie 1211 SW 5th Avenue Suite 1500 Portland, OR. 97204
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15 **XXIII. RETENTION OF JURISDICTION**

16 50. This Court retains jurisdiction over both the subject
17 matter of this Consent Decree and the Parties for the duration of
18 the performance of the terms and provisions of this Consent
19 Decree for the purpose of enabling any of the Parties to apply to
20 the Court at any time for such further order, direction, and
21 relief as may be necessary or appropriate for the construction or
22 modification of this Consent Decree, or to effectuate or enforce
23 compliance with its terms, or to resolve disputes in accordance
24 with Section VIII (Dispute Resolution) hereof.
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1 **XXIV. MODIFICATIONS**

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

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

9 **XXV. APPENDICES**

10 53. The following appendices are attached to and
11 incorporated into this Consent Decree: "Appendix A" is the
12 United States' estimated calculation of the cost of the remedy as
13 set forth in the 1993 Record of Decision; "Appendix B" is the
14 1993 Record of Decision; and "Appendix C" is a map of the Site
15 with narrative description.

16 **XXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

17 54. This Consent Decree shall be lodged with the Court for
18 a period of thirty (30) days for public notice and comment. The
19 United States and the State reserve the right to withdraw or
20 withhold their consent if the comments regarding the Consent
21 Decree disclose facts or considerations which indicate that this
22 Consent Decree is inappropriate, improper, or inadequate.
23 Settling Defendants consent to the entry of this Consent Decree
24 without further notice and Settling Parties will not oppose the
25 terms of or discourage the entry of this Consent Decree during
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1 the public comment period, unless the United States and the State
2 have notified the Settling Parties in writing that they no longer
3 support entry of the Consent Decree.

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

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

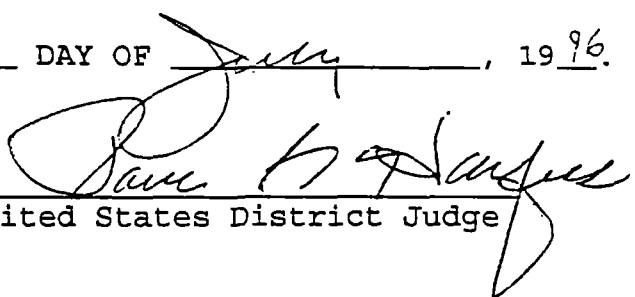
23 **XXVII. SIGNATORIES/SERVICE**

24 57. The undersigned representatives of the Settling Parties
25 to this Consent Decree, the State, and the United States each
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1 certify that they are fully authorized to enter into the terms
2 and conditions of this Consent Decree and to execute and legally
3 bind such Party to this document.

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

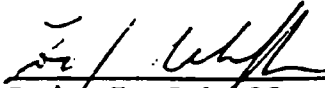
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10 SO ORDERED THIS 16 DAY OF July, 1996.

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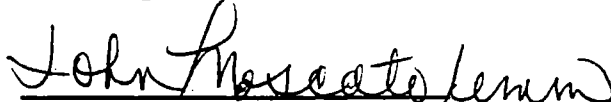
1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States of America v. Montana Pole and Treating
3 Plant, et al. and ARCO v. Oass, et al., relating to the Montana
4 Pole and Treating Plant Superfund Site, Consolidated Civil Action
5 Nos. 91-82-BU-PGH and 90-75-BU-PGH.

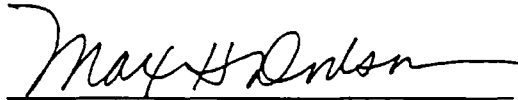
6 FOR THE UNITED STATES OF AMERICA

7 Date: 3/3/96

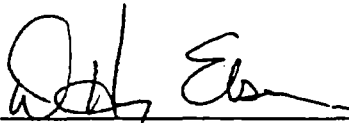
8 
9 Lois J. Schiffer
10 Assistant Attorney General
11 Environment and Natural Resources
12 Division
13 U.S. Department of Justice
14 Washington, D.C. 20530

15 Sherry Scheel Mateucci
16 United States Attorney
17 P.O. Box 1478
18 Billings, MT 59103

19 
20 John N. Moscato
21 Vincent J. Horn, Jr.
22 Attorney
23 Environmental Enforcement Section
24 Environment and Natural Resources
25 Division U.S. Department of Justice
26 999 18th Street, Suite 945N Denver,
27 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

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FOR THE STATE OF MONTANA

Date: 12-20-95

Marc Racicot
Marc Racicot
Governor of Montana
Capitol Station
Helena, Montana 59620

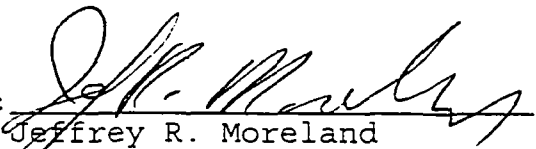
William B. Kirley
William B. Kirley
Legal Counsel
Environmental Remediation Division
Montana Department of
Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

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FOR BURLINGTON NORTHERN RAILROAD COMPANY

Date: 1/16/96

By: 
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:

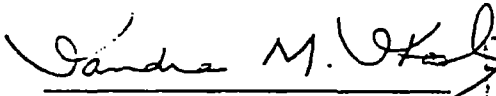

CT Corporation System
P.O. Box 1166
Helena, MT 59624

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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:

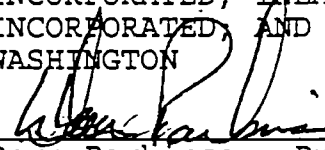
Sherry M. Purdy, Esq.
Senior Attorney
Atlantic Richfield Company
555 Seventeenth Street
16th Floor
Denver, Colorado 80202

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

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

6 FOR MONTANA RESOURCES,
7 INCORPORATED; INLAND PROPERTIES,
8 INCORPORATED, AND DENNIS R.
9 WASHINGTON

10 Date: 2/8, 1995⁶


11 
12 _____
13 Dorn Parkinson, President
14 Montana Resources, Inc.

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

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FOR ROY F. WESTON, INCORPORATED

Date: Dec. 8th, 1995 By: 
Donald B. Bauer
Assistant and General Counsel

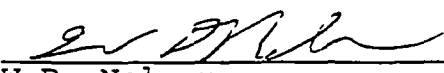
Agent Authorized to Accept Service on Behalf of Above-signed Party:

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

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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

CONSENT DECREE APPENDICES

(APPENDICES A, B, AND C TO THE CONSENT DECREE
ARE INCORPORATED HEREIN BY REFERENCE)

Exhibit B

Montana Short Term Investment Pool Participation Agreement Form

STATE OF MONTANA
BOARD OF INVESTMENTS

SHORT-TERM INVESTMENT POOL

RULES AND PROCEDURES

PURPOSE

The purpose of the Short-Term Investment Pool (STIP) is to obtain the highest possible return, yet maintain a highly liquid position whereby funds may be invested for relatively short periods, one day or more, depending upon the shareholder's anticipated use of the funds.

SHAREHOLDERS

As authorized by Sections 17-6-202 and 204, MCA, STIP shareholders are qualifying state agencies and Montana local governmental units, including cities, counties, and school districts. State agencies must have appropriate written, statutory, grant, or contract authority to invest their funds and receive the investment earnings.

STIP Participation Agreements, signed by shareholders, must be on file with the Board of Investments (BOI) before shareholders can invest.

SHARES

The shareholder's STIP ownership is represented by shares. Shareholders having funds to invest and owning shares are required to give one business day's notice to buy or sell shares.

SHARE VALUE

Share prices are fixed at \$1.00 per share.

STIP PORTFOLIO

The STIP investment portfolio consists of securities with maximum maturity of 397 days or less. The portfolio is carried at amortized cost.

CONFIRMATIONS

Each shareholder who buys or sells STIP shares receives a written confirmation the next business day following the transaction. The confirmation states the number of shares purchased or sold and the transaction amount. Shareholders are

MONTANA SHORT TERM INVESTMENT PROGRAM (STIP)
PARTICIPATION AGREEMENT

MONTANA BOARD OF INVESTMENTS
Capitol Station
Helena, MT 59620-0125

Effective April 1, 1995

The state agency or local government unit (shareholder) listed below hereby agrees to participate in STIP as established under Sections 17-6-202 and 204 MCA, and warrants as follows:

1. _____
(Name of state agency or local governmental unit)

(Address) (City) (County) (Zip)

is a state agency or local governmental unit organized under the Montana laws and is legally authorized by its governing body to become a shareholder in STIP.

2. State agency legal counsel must cite the section(s) of state law authorizing their account to retain interest earnings and certify the account is legally entitled to participate in STIP.

(State Law Authorizing Interest Retention) (State Agency Legal Counsel Signature)

3. The person(s) whose signature(s) appear below is (are) authorized to purchase and sell shares in STIP for the account of the shareholder, and the Board of Investments will be notified promptly of any change in authorized personnel;

4. Any sale or distribution will be made by Electronic Funds Transfer or wire crediting the appropriate treasury or shareholder bank account. Please specify your depository.

_____ For the Credit of
(Name of Depository Bank and ABA #)

(Account Name) (Account Number)

5. The shareholder accepts the terms and conditions of STIP operations as outlined in the Rules and Procedures with the understanding that there will be no changes therein without previous written notice.

(Agency Number) (Accounting Entity) (Entity Name)

Reinvest earnings By: _____

Distribute earnings _____

(Date) (Telephone) (Authorized Officers)

Exhibit C

Initial Investment Policy Statement

MONTANA BOARD OF INVESTMENTS
INVESTMENT POLICY STATEMENT
Montana Pole Superfund Site Settlement Fund
JULY 1996

INTRODUCTION

The purpose of an investment policy statement is to give the investment manager guidance in developing an investment program to achieve the objectives agreed upon and enable the client, Department of Environmental Quality, to monitor the progress of the plan.

OBJECTIVES

Return Requirement: To maximize the total rate of return through a diversified portfolio of fixed income assets.

Risk Tolerance: This is a State special revenue fund having a below average ability to assume interest rate risk. Risk tolerance will decline if long term investments have to be liquidated earlier than estimated in the cash draw down schedule. Corporate securities must be rated A3/A- or higher by Moody's/Standard & Poor's rating agencies to qualify for purchase by this fund. All other long-term investments will consist of direct or indirect obligations of the United States.

CONSTRAINTS

Time Horizon: This fund is considered an intermediate-term fund that has a time horizon beyond one year. The maximum maturity for any security purchased for this fund is 2026.

Liquidity Needs: Liquidity will be needed to fund cash draw down schedule. Short term investments to provide liquidity will be made through the Montana Short Term Investment Pool. The Board will use its investment discretion to determine the appropriate mix of long term investments and Short Term Investment Pool (STIP) shares, considering the dates of receipt of funds and the funding needs indicated by the cash draw down schedule to be provided by DEQ prior to August 1, 1996.

Tax Considerations: This fund is tax-exempt. Therefore, tax advantaged investments will not be used.

Unique Circumstances: The project being financed through this fund is the remediation of environmental contamination at a former wood-treating site. The nature of construction/remediation work includes the potential for cost overruns and unexpected expenses. DEQ will use its best efforts to inform the Board of Investments of any expected overruns or changes in the cash draw down schedule and will attempt to provide notice of such changes as much in advance as possible.

Legal Considerations: This fund is governed by state regulations, specifically, the "prudent expert principle" which requires the Board of Investments to: (a) discharge its duties with the care, skill, prudence and diligence, under the circumstance then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims; (b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is solely prudent not to do so; and (c) discharge its duties solely in the interest of and for the benefit of the funds forming the unified investment program.

The Montana Constitution does not allow equity type investments.

Though public trust funds are not currently regulated by the Securities & Exchange Commission (SEC), such regulations are consistent with the principles of fiduciary responsibility outlined in the prudent expert principle and should be used as a guide to developing investment policy for this trust fund.

BACKGROUND INFORMATION

In July 1996, a Consent Decree between the State, EPA, Atlantic Richfield Company, Burlington Northern Railroad and Montana Resources, Inc., signed a consent decree settling cost recovery litigation brought by EPA against several responsible parties for the Montana Pole and Treating Plant NPL Site in Butte, Montana. The settlement involved, among other things, payment by the settling defendants (ARCO, BN, and MRI) of \$35.07 million to complete the cleanup of the site. Those funds and the earnings from the investment of those funds are to be used by the State and EPA solely for the purpose of remediating hazardous substance contamination at the Montana Pole Site.

**ASSET ALLOCATION PROJECTION
(AT MARKET)
(FOR THE LIFE OF THE FUND)**

FIXED INCOME

Government/Agency Bonds	0-100%
Domestic	0-100
Mortgage-backed	0-25
Corporate Bonds	0-25%
Domestic	0-25
Short-Term Investment Pool (STIP)	<u>0-100%</u>
TOTAL FIXED-INCOME	<u>100.0%</u>

Exhibit D

Initial Estimated Budget and RA/O&M Allocation

Montana Pole and Treating Plant Site

Estimated Remedial Action and Operations and Maintenance Costs

Budget Estimate as of 7/24/96

Net Interest Rate 5%

Costs in millions of \$

Year #	RA	O&M	Notes:	
1	1996	7.851	0	Initial construction; Northside soil remediation begins;
2	1997	1.275	0	Northside gw systems begin operations
3	1998	2.065	0	Partial backfill of treated soils; some Phase 2 work
4	1999	0.775	0	
5	2000	3.775	0	North side soil remediation complete
6	2001	8.700	0	Southside soil remediation begins
7	2002	3.285	0	Soil flushing systems begin operation
8	2003	2.285	0	Partial backfill of treated soils
9	2004	1.040	0	
10	2005	1.040	0	
11	2006	2.685	0.780	Southside soil remediation complete; ten years of northside gw operations
12	2007	0.260	0.780	
13	2008	0.260	0.780	
14	2009	0.260	0.780	
15	2010	0.260	0.780	
16	2011	0.260	0.780	
17	2012	0.260	0.780	
18	2013	0.260	0.780	
19	2014	0.260	0.780	
20	2015	0	1.040	Ten years of south-side gw operations completed
21	2016	0	1.040	
22	2017	0	1.040	
23	2018	0	1.040	
24	2019	0	1.040	
25	2020	0	1.040	
26	2021	0	1.040	
27	2022	0	1.040	
28	2023	0	1.040	
29	2024	0	1.040	
30	2025	0	1.040	
Present Worth		\$28.25	\$6.82	
Total Present Worth:		\$35.07		