

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF MONTANA

IN THE MATTER OF VIOLATIONS OF
THE MONTANA WATER QUALITY ACT
BY BRIDGER PIPELINE LLC, AND
REMEDIAL ACTION UNDER THE
MONTANA COMPREHENSIVE
ENVIRONMENTAL CLEANUP AND
RESPONSIBILITY ACT AT POPLAR
PIPELINE, GLENDIVE, DAWSON
COUNTY, MONTANA. (FID 2405)

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. WQ-15-12

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS

II. PARTIES BOUND

III. STATEMENT OF PURPOSE

IV. DEFINITIONS

V. DEQ’s FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DETERMINATIONS

VI. ORDER.....

VII. NOTICES

VIII. ACCESS TO INFORMATION

IX. RECORD RETENTION.....

X. COMPLIANCE WITH OTHER LAWS.....

XI. REIMBURSEMENT OF COSTS.....

XII. DISPUTE RESOLUTION

XIII. FORCE MAJEURE

XIV. STIPULATED PENALTIES.....

XV. CIVIL PENALTIES AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS.....

XVI. COVENANT NOT TO SUE BY DEQ.....

XVII. RESERVATION OF RIGHTS BY DEQ

XVIII. COVENANT NOT TO SUE BY BRIDGER

XIX. RESERVATION OF RIGHTS BY BRIDGER.....

XX. OTHER CLAIMS

XXI. INDEMNIFICATION

XXII. MODIFICATIONS.....

XXIII. INTEGRATION/APPENDICES
XXIV. TERMINATION AND SATISFACTION.....
XXV. AUTHENTICITY OF DATA
XXVI. EFFECTIVE DATE.....
XXVII. AUTHORITY OF SIGNATORIES.....
XXVIII. NOTICE AND PUBLIC COMMENT.....

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“Consent Order”) is entered into voluntarily between Bridger Pipeline LLC (“Bridger”) and the Montana Department of Environmental Quality (“DEQ”) pursuant to the authority vested in the State of Montana, acting by and through DEQ, under the Montana Water Quality Act (“WQA”) (Sections 75-5-101, *et seq.*, MCA) and the Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”), Sections 75-10-701, *et seq.*, MCA), and rules adopted thereunder. This Consent Order addresses alleged violations of the WQA and all CECRA remedial actions related to and/or arising out of the Bridger Poplar Pipeline crude oil discharge (the Discharge) to the Yellowstone River (the River), occurring near Glendive, Dawson County, Montana, on January 17, 2015.

2. DEQ and Bridger agree that this Consent Order has been negotiated in good faith and that the actions undertaken by Bridger in accordance with this Consent Order do not constitute an admission of any liability. Bridger denies or does not admit, and retains the right to controvert in any subsequent proceedings, the validity of DEQ’s Findings of Fact and Conclusions of Law and Determinations (Section V), provided however that in an action to enforce this Consent Order, DEQ is not required to demonstrate the validity of this Consent Order and DEQ’s Findings of Fact and Conclusions of Law and Determinations (Section V) and Bridger may not defend against the enforcement action by attacking this Consent Order and DEQ’s Findings of Fact and Conclusions of Law and Determinations (Section V) or DEQ’s authority to enter into this Consent Order. Bridger’s execution and compliance with this Consent Order will not be construed as an admission of liability, fault or wrong-doing by Bridger and will not give rise to any presumption of law or findings of fact that will inure to the benefit of any third party. Bridger agrees to comply with, and be bound by, the terms of this Consent Order

and further agrees it will not seek judicial review of DEQ's jurisdiction to enter into this Consent Order or authority to enter into this Consent Order.

3. Bridger agrees that this Consent Order may be considered by DEQ to the extent authorized by Section 75-1-1001, MCA.

II. PARTIES BOUND

4. This Consent Order applies to and is binding upon DEQ, Bridger, and its successors and assigns. Any change in ownership or corporate status of Bridger, including, but not limited to, any transfer of Bridger's assets or real or personal property, will not alter Bridger's status or responsibilities under this Consent Order.

III. STATEMENT OF PURPOSE

5. In entering into this Consent Order, the objectives of DEQ and Bridger are to: (a) document the remedial actions completed to determine the nature and extent of the Discharge and/or alteration of land or state waters resulting from the Discharge and any threat to the public health, welfare, or the environment caused by the Discharge and/or alteration of land or state waters resulting from the Discharge; (b) recover Remedial Action Costs incurred by the State and DEQ with respect to this Consent Order; and (c) assess civil penalties, a portion of which shall include one or more DEQ-approved Supplemental Environmental Project(s) ("SEP"), against Bridger for the Discharge. DEQ has determined that the contamination from the Discharge has been fully investigated and remedial actions completed, with the exception of any SEP, and thus an "Additional Work" provision is unnecessary.

6. Bridger reserves all rights provided by law to seek and obtain contribution, indemnification, and/or any other form of recovery from other potentially responsible parties or other third parties or their insurers for past or future investigation or remediation response and/or cleanup costs or such other costs or damages arising from the Discharge as may be provided by

law. For the purposes of this paragraph, the State is considered a first party. Nothing in this paragraph is intended to modify or alter Section XVIII (Covenant Not to Sue by Bridger). Up to the Effective Date of this Consent Order, Bridger has demonstrated good faith efforts to resolve the alleged violations cited in the February 12, 2015, Notice of Potential Liability and Violation Letter (“VL”). DEQ acknowledges that Bridger has worked cooperatively with DEQ, has promptly and diligently responded to the Discharge, has complied fully with DEQ’s requirements regarding the Discharge, and has paid all of the past remedial action costs in accordance with Section 75-10-722, MCA.

IV. DEFINITIONS

7. Terms used in this Consent Order are to be taken and understood in their natural and ordinary sense unless this Consent Order indicates that a different meaning was intended. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in the WQA or CECRA, or any rules promulgated thereunder, have the meaning assigned to them under the law. Whenever terms listed below are used in this Consent Order, in the documents attached to this Consent Order, or incorporated by reference into this Consent Order, the following definitions apply:

a. “Bridger” means Bridger Pipeline LLC, a Wyoming limited liability company authorized to do business in the State of Montana, and any successors in interest.

b. “Consent Order” means this document together with any subsequent incorporations, modifications and amendments.

c. “Contractor” means the individual(s), company, or companies retained by or on behalf of Bridger to undertake and complete all or a part of the Work.

d. “Day” means a calendar day, unless a business day is specified. In computing any period of time under this Consent Order, where the last day would fall on a

Saturday, Sunday, or Federal or State of Montana holiday, the period will run until the close of business of the next business day.

e. “Deliverable” means any written plan or report that Bridger must submit to DEQ under the terms of this Consent Order.

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

g. “Discharge” means the Bridger Pipeline LLC Poplar Pipeline Crude Oil discharge into the Yellowstone River, which occurred near Glendive, Dawson County, Montana, on January 17, 2015.

h. “Effective Date” means the effective date of this Consent Order as provided in Section XXVI (Effective Date).

i. “Force Majeure” means any event arising from causes beyond the control of Bridger, or of any entity controlled by or associated with Bridger, including but not limited to its Contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite the best efforts of Bridger to fulfill the obligation. The requirement that Bridger use “best efforts” to fulfill the obligation includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the Force Majeure event, such that the delay is minimized to the greatest extent reasonably possible. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Bridger would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money in consideration for access, as applicable. Force Majeure does not include financial inability to complete the Work or increased cost of performance, or non-extraordinary weather events.

j. “Interest” shall be at the rate specified in Section 75-10-722, MCA, as of the date of execution of this Consent Order.

k. “Party” means Bridger or DEQ. “Parties” means Bridger and DEQ.

l. “Public Water Supply Laws” or “PWSL” means Sections 75-6-101 through 75-6-131, MCA, and implementing regulations.

m. “Remedial Action Costs” means all costs as defined by Section 75-10-701(23), MCA, incurred by the State of Montana that are attributable to or associated with a remedial action for the Discharge, including all interest due under Section 75-10-722, MCA.

n. “Schedule” means the schedule for completion of payments and all Deliverables, as approved by DEQ and incorporated into this Consent Order.

o. “State” means the State of Montana, including all its departments, agencies and instrumentalities.

p. “Work” means remedial action taken by Bridger and its contractors to address the Discharge and completed in accordance with work plans approved by the Unified Command and/or DEQ.

V. DEQ’S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DETERMINATIONS

DEQ makes the following Findings of Facts, Conclusions of Law and Determinations:

8. DEQ is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.

9. DEQ administers the WQA, CECRA, and the PWSL and the Administrative Rules of Montana (ARM) adopted thereunder.

10. Bridger is a Wyoming limited liability company, registered to conduct business within the State of Montana, and is a “Person” as defined in Sections 75-5-103(28) and 75-10-701(16), MCA.

11. Bridger is the owner and operator of the Poplar Pipeline (the “Pipeline”). The Pipeline is a 10-inch and 12-inch diameter pipeline that primarily transports Bakken crude oil. The Pipeline crosses underneath the River approximately 6 miles upstream (south) of the city of Glendive, Dawson County, Montana.

12. On January 17, 2015, the Pipeline leaked, discharging approximately 758 barrels of crude oil into the River. Crude oil was transported at and downstream of the point of discharge, and was placed within the River and onto portions of land in and adjacent to the River. Crude oil constituents included volatile organic compounds (VOCs), semivolatile organic compounds, extractable petroleum hydrocarbon fractions, and volatile petroleum hydrocarbon fractions.

13. Approximately 65 barrels of crude oil from the Discharge were recovered from the Yellowstone River. DEQ assumes the estimated remaining 693 barrels of crude oil flowed downstream in a free oil or dissolved state, flowed overbank or into side channels, volatilized into the atmosphere, and became entrained in riverbank and river bottom sediments.

14. The Glendive public water supply system (PWS) uses the River for its source of water. On January 19, 2015, at 09:15 hours, the City of Glendive collected a finished water sample from the designated point of compliance (the laboratory faucet) at the Glendive water treatment plant (WTP), and the benzene result from this sample was 14 micrograms per liter ($\mu\text{g/L}$) which exceeds the benzene Maximum Contaminant Level (MCL) of 5.0 $\mu\text{g/l}$. Bridger collected a water sample on January 19, 2015 at 15:15 hours from the river water inlet sampling port inside the WTP building, and that sample had benzene at 1.4 $\mu\text{g/L}$, which did not exceed the

benzene MCL. As a result of the detection of benzene above the MCL in the Glendive PWS, DEQ issued a Health Advisory from January 20, 2015, through January 23, 2015. Later, during ice breakup in the River, Glendive issued a “conserve water advisory” from March 14, 2015, through March 16, 2015 as a precautionary measure in response to detections of volatile organic compounds in its water analysis equipment.

15. The crude oil released is a “hazardous or deleterious substance,” as that term is defined in Section 75-10-701(8), MCA.

16. The crude oil discharged from the Pipeline is an “industrial waste,” as that term is defined in Section 75-5-103(15), MCA.

17. The water-use classification in ARM 17.30.611(1)(c)(i) states the mainstem of the River from the Billings intake to the North Dakota border is B-3. The classification standards in ARM 17.30.625(2)(h) state concentrations of carcinogenic parameters in B-3 waters may not exceed the applicable standards.

18. Benzene is classified as a carcinogen and the maximum contaminant level for benzene in drinking water is 5.0 µg/l, as established in ARM 17.38.204(1) and 40 CFR 141.61(a) adopted by reference therein. The Montana water quality standard for benzene is 5.0 µg/l as established in Circular DEQ 7 - Montana Numeric Water Quality Standards.

19. “Pollution” means: (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or

welfare, to livestock, or to wild animals, birds, fish, or other wildlife, as defined in Section 75-5-103(30), MCA.

20. Water in the River and in the subsurface saturated and unsaturated zones is “state waters” under Section 75-5-103(34), MCA.

21. Bridger violated Section 75-5-605(1)(a), MCA, which states it is unlawful to cause pollution of any state waters or place or cause to be placed any wastes where they will cause pollution of state waters.

22. Bridger violated Section 75-5-605(2)(c), MCA, by discharging industrial wastes into state waters without a permit.

23. On January 26 and 27, 2015, and February 5, 2015, concentrations of benzene above the 5.0 µg/l water quality standard were detected at three sampling locations in the River. The crude oil from the Discharge caused a documented exceedance of the 5.0 µg/l water quality standard for benzene in state waters. A documented exceedance of the water quality standard for benzene constitutes pollution.

24. The crude oil from the Discharge caused a visible oil film on water in the River that violated the prohibition of a visible oil film on surface water in ARM 17.30.637(1)(b). The last documented visible oil film or sheen was observed by DEQ on April 8, 2015.

25. DEQ sent Bridger a VL on February 12, 2015, that described Bridger’s violations of the WQA. The letter also notified Bridger that it is a potentially liable person under CECRA, as required by Section 75-10-712, MCA. The VL required necessary corrective actions and required that Bridger submit a written commitment to implement the corrective actions and a proposed implementation schedule by February 26, 2015.

26. DEQ received Bridger's written response to the VL on February 26, 2015. The response included a commitment to implement and complete the recommended corrective actions.

27. DEQ has approved the following reports submitted by Bridger in order to address remedial actions required by DEQ's Items 3-5 of DEQ's February 12, 2015, VL: the December 3, 2015, *Poplar Pipeline Response, Groundwater Sampling Report, Glendive, MT, Revision 3*, approved by DEQ on January 15, 2016; the January 5, 2016, *Poplar Pipeline Response, Revision 6, Surface Water and Sediment Sampling Report, Glendive, MT*, approved by DEQ on January 29, 2016; the January 12, 2016, Data Comparison Report (comparing Bridger's data from the Poplar Pipeline Response to data collected by EPA and DEQ), approved by DEQ on January 29, 2016; the January 12, 2016, *Poplar Pipeline Response, Revision 2, Drinking Water Sampling Report, Glendive, MT*, approved by DEQ on February 2, 2016; the January 18, 2016, *Sediment and Co-located Water Sampling Report, Glendive Montana, July 29-August 2, 2015, Revision 1*, approved by DEQ on May 2, 2016; and the August 2, 2016 Poplar Pipeline Response, Reclamation Report, Glendive, MT, approved by DEQ on August 3, 2016. Bridger has also submitted a *Mass Balance and Weathering Study*, dated April 10, 2015, as required by Item 2 of DEQ's February 12, 2015, VL.

28. Except as provided in Paragraph 2, none of DEQ's Findings of Fact and Conclusions of Law and Determinations will constitute an admission of fact, law or liability by Bridger and will not create any rights with respect to any third party, and no third party will have the benefit of any of the foregoing allegations and/or provisions.

VI. ORDER

29. Based on DEQ's Findings of Fact, Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Bridger must comply with all provisions of this Consent Order, and all documents incorporated by reference into this Consent Order.

VII. NOTICES

30. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Order must be in writing unless otherwise specified. Whenever, under this Consent Order, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Either Party may change the person and/or address applicable to it by providing notice of such change to both Parties. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Order regarding such Party.

Bridger:

- a. Robert Dundas
Environmental Coordinator
Bridger Pipeline LLC
PO Box 2360
Casper, WY 82602-2360
United States of America
(307) 266-0411
Bob.dundas@truecos.com

DEQ:

- a. Laura Alvey
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-0212- phone
lalvey@mt.gov

- b. Thad Adkins
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-6490- phone
tadkins@mt.gov

VIII. ACCESS TO INFORMATION

31. With respect to the Work performed, Bridger will provide to DEQ, upon request and unless privileged or otherwise protected from disclosure, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Bridger’s possession or control or that of their contractors or agents relating to activities for the Discharge or to the implementation of this Consent Order, including, but not limited to, correspondence, or other documents or information regarding the Work. Unless privileged or otherwise protected from disclosure, Bridger will reasonably cooperate to make available to DEQ, for purposes of any remedial actions, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

32. Bridger may assert that certain documents, records and other information submitted to DEQ are a trade secret pursuant to Section 75-10-707(8), MCA. If DEQ accepts the characterization, DEQ will maintain the records as confidential.

33. DEQ shall provide access for copying to Bridger, within 60 Days of Bridger’s request, all non-privileged and non-protected technical documents and information within DEQ’s possession or control or that of its contractors or agents relating to the implementation of this Consent Order.

34. DEQ or Bridger may assert that certain documents, records and other information are privileged or confidential under the attorney-client privilege or any other privilege or

protection recognized by State law. If DEQ or Bridger asserts such a privilege or protection in lieu of providing documents, it shall provide the other party with the following: 1) the title of the document, record or information; 2) the date of the document, record or information; 3) the name and title of the author of the document, record or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record or information; and 6) the privilege or protection asserted.

IX. RECORD RETENTION

35. Until five years after Bridger's receipt of DEQ's notification pursuant to Section XXIV (Termination and Satisfaction), Bridger must preserve and retain all non-identical copies of technical records and documents (including technical records or documents in electronic form) now in its possession or control or that come into its possession or control that relate to the performance of the Work with respect to the Discharge, regardless of any corporate retention policy to the contrary, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ. Until five years after Bridger's receipt of DEQ's acceptance of Bridger's certification of completion of the work pursuant to Section XXIV (Termination and Satisfaction), Bridger must also instruct its Contractors and agents to preserve all technical documents, records, and other information (including but not limited to field logs, photographs, chain of custody forms, raw data, and manifests) relating to performance of the Work with respect to the Discharge, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ.

36. At the conclusion of this technical document retention period, Bridger must notify DEQ at least 90 days prior to the destruction of any such technical records or documents, and, upon request by DEQ, unless such technical records and documents (including technical records

or documents in electronic form) have already been provided to DEQ, Bridger must deliver any such records or documents to DEQ. Bridger may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by State law, in accordance with Paragraph 34. Prior to removing any data or information from the Web Portal at projects.cteh.com or the Flex Portal at flex.cteh.com or no longer maintaining such portals, Bridger will provide DEQ with at least 60 days' notice and consult with DEQ on how to provide DEQ with the information.

37. Bridger certifies that, to the best of its knowledge and belief, it has been maintaining all records as required by law.

X. COMPLIANCE WITH OTHER LAWS

38. Bridger must perform all actions required pursuant to this Consent Order in accordance with all applicable local, State and federal laws and rules.

39. By entering into this Consent Order, and as of the Effective Date, Bridger has, to the best of DEQ's knowledge, diligently pursued investigation and remediation activities pursuant to applicable State and federal laws.

XI. REIMBURSEMENT OF COSTS

40. Bridger must reimburse State Remedial Action Costs not previously reimbursed by Bridger's payment of a DEQ invoice. Bridger has paid all past Remedial Action Costs incurred by DEQ or any other State agency for all activity thru August 31, 2016. Bridger must continue to reimburse DEQ or any other State agency for Remedial Action Costs incurred by the agency and submitted to Bridger until the termination of this Consent Order.

a. Remedial Action Costs. On a monthly or greater basis, DEQ will send Bridger a bill requiring payment that includes detailed invoices and supporting documentation showing the Remedial Action Costs incurred by the State and its contractors or subcontractors.

Bridger agrees to reimburse the State within 30 days of receipt of each accounting that identifies Remedial Action Costs. Remedial Action Costs do not include costs for DEQ oversight of the SEP.

With the exception of Paragraph 57.b or as otherwise specified in this paragraph, Bridger must make all payments for Remedial Action Costs by check, made payable to the “Department of Environmental Quality,” and sent to:

Montana Department of Environmental Quality
Office of Financial Services
P.O. Box 200901
Helena, MT 59620-0901

All payments must be accompanied by a transmittal letter identifying the name and address of the Party making payment, and must specify that the payment is to be applied to the Bridger Poplar Pipeline Discharge. Bridger may instead choose to make payments to DEQ via electronic wire transfer as follows:

Bank Name:	US Bank NA, Montana
Bank ABA # (routing):	092900383
Bank Address:	302 N. Last Chance Gulch, Helena, MT 59601
Account Name:	State of Montana
Account Number:	156041200221
Federal ID Number:	81-0302402
Third Party Information:	On the wire in the description (OBI) field include: “Bridger Poplar Pipeline Discharge”

41. Payments of DEQ’s Remedial Action Costs under this section are made pursuant to Section 75-10-715(2)(a), MCA, and in response to the VL sent pursuant to Section 75-10-712, MCA. Payment of other State agencies’ Remedial Action Costs (if any) is made pursuant to Section 75-10-715(2)(a), MCA. These other State agency costs will be deposited in the fund from which those costs were paid. .

42. In the event that payments for Remedial Action Costs are not made within 30 days of Bridger’s receipt of a bill, interest on the unpaid balance will accrue in accordance with

Section 75-10-722, MCA. The interest on Remedial Action Costs will begin to accrue on the date the bill is due and will continue to accrue until the date of payment. Payments of interest made under this paragraph will be in addition to such other remedies or sanctions available to DEQ by virtue of Bridger's failure to make timely payments under this section, including but not limited to, payment of Stipulated Penalties pursuant to Section XIV.

XII. DISPUTE RESOLUTION

43. Bridger may, on a line item basis, object to any of the Remedial Action Costs billed under this Consent Order if Bridger believes the State has made a mathematical error or believes the State's costs, a contractor's costs or a subcontractor's costs, are not allowed pursuant to the terms of this Consent Order. Such objection must be made in writing within 30 days of receipt of the bill and must be sent to DEQ's personnel designated in Section VII (Notices) and to Mike Trombetta, Contaminated Site Cleanup Bureau Chief, at:

Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Mike Trombetta's telephone number is (406) 444-6463 and his email is mtrombetta@mt.gov.

Any such objection must specifically identify the costs being objected to and the basis for objection. In the event of an objection, Bridger must, within the 30-day period, pay all uncontested Remedial Action Costs in the manner described in this Consent Order.

44. If DEQ prevails in the objection or for any portion thereof, within 15 days of the resolution of the dispute, Bridger must pay the sums due (with accrued interest in accordance with Section 75-10-722, MCA) to DEQ in the manner described in Section XI (Reimbursement of Costs).

45. The objection procedures set forth in this Section will be the exclusive mechanisms for resolving disputes regarding Bridger's obligation to reimburse Remedial Action Costs.

46. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of this Section will be the exclusive mechanism to resolve disputes regarding this Consent Order. However, the procedures set forth in this Section will not apply to actions by DEQ to enforce obligations of Bridger that have not been disputed in accordance with this Section.

47. A dispute will be considered to have arisen when one party sends the other party a written Notice of Dispute. Any dispute regarding this Consent Order must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations must not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

48. **Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by DEQ must be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Bridger invokes the formal dispute resolution procedures of this section by serving on DEQ 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 Bridger.

b. Within 30 days after receipt of Bridger's Statement of Position, DEQ will serve on Bridger its Statement of Position, including, but not limited to, any factual data,

analysis, or opinion supporting that position and all supporting documentation relied upon by DEQ. Within 14 days after receipt of DEQ's Statement of Position, Bridger may submit a Reply.

49. Formal dispute resolution must be conducted pursuant to the procedures set forth in this paragraph.

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

b. In proceedings on any dispute governed by this paragraph, Bridger will have the burden of demonstrating that the decision of the DEQ Director is arbitrary and capricious or otherwise not in accordance with law.

c. The Director of DEQ will issue a final administrative decision resolving the dispute based on the administrative record. This decision will be binding upon Bridger, subject only to the right to seek judicial review in a court of competent jurisdiction.

50. Bridger's remaining obligations under the Consent Order shall not be tolled by submission of any objection for dispute resolution under this section. Following resolution of the dispute, as provided by this section, Bridger must fulfill the requirement that was the subject of the dispute in accordance with the agreement or decision reached.

XIII. FORCE MAJEURE

51. Consistent with Section IV (Definitions), Paragraph 7(i), Bridger agrees to perform all requirements of this Consent Order according to the Schedule(s) approved by DEQ, as may be modified pursuant to the terms of this Consent Order, unless the performance is delayed or prevented by a Force Majeure.

52. If any event occurs or has occurred that may reasonably delay or prevent the performance of any obligation under this Consent Order, whether or not caused by a Force Majeure event, for which Bridger intends or may intend to assert a claim of Force Majeure, Bridger must notify DEQ orally and via email within 48 hours of when Bridger becomes aware that the event might reasonably cause a delay. Within seven days thereafter, Bridger must provide in writing to DEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Bridger's rationale for attributing such delay to a Force Majeure, if it intends to assert such a claim; and a statement as to whether, in the opinion of Bridger, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Bridger must include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements regarding an event will preclude Bridger from asserting any claim of Force Majeure regarding that event for the period of time of such failure to comply and for any additional delay caused by the failure to comply, provided, however, that if DEQ, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a Force Majeure and whether Bridger has exercised its best efforts, DEQ may, in its unreviewable discretion, excuse in writing Bridger's failure to submit a timely or complete notice under this paragraph.

53. If DEQ agrees that the delay or anticipated delay is attributable to a Force Majeure, the time for performance of the obligations under this Consent Order that are affected by the Force Majeure will be extended by DEQ for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure will not, of itself, extend the time for performance of any other obligation. If DEQ does

not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, DEQ will notify Bridger in writing of its decision. If DEQ agrees that the delay is attributable to a Force Majeure, DEQ will notify Bridger in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure, including any extension of time for performance of any other obligations. The determination that a Force Majeure event has occurred shall not result in a finding of noncompliance with this Consent Order on behalf of Bridger.

54. If Bridger elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution) regarding DEQ's decision, it must do so no later than 30 days after receipt of DEQ's notice. In any such proceeding, Bridger will have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure. If Bridger carries this burden, the delay at issue will be deemed not to be a violation by Bridger of the affected obligation of this Consent Order.

55. The failure by DEQ to timely complete any obligation under the Consent Order is not a violation of the Consent Order, provided, however, that if such failure prevents Bridger from meeting one or more deadlines in the Consent Order, Bridger may seek relief under this Section.

XIV. STIPULATED PENALTIES

56. Bridger will be liable to DEQ for stipulated penalties in the amounts set forth in this section for failure to comply with the requirements of this Consent Order specified below, unless excused by DEQ in writing. "Compliance" by Bridger will include completion of all activities and obligations required by this Consent Order including payments as specified in Section XI (Reimbursement of Costs).

57. Stipulated Penalty Amounts.

a. In the event that Bridger violates Section XI (Reimbursement of Costs) or Section XV (Civil Penalties and Supplemental Environmental Projects) of this Consent Order, DEQ may assess, and Bridger will accrue and pay, by tendering to DEQ within 30 days of Bridger's receipt of a written demand from DEQ for payment of such penalties, the sum set forth below as stipulated penalties for each stipulated penalty event unless subject to subsections (d) and (f). Stipulated penalties may be assessed for each day during which such violation, delay, or failure occurs or continues, including weekends or holidays, unless subject to subsections (d) and (f). The demand will specify the events giving rise to Bridger's asserted liability for stipulated penalties and the amount of such penalties. In evaluating whether to exercise its discretion to impose any such penalties, DEQ will consider the good faith efforts of Bridger to comply with its obligations herein.

b. The following stipulated penalties will accrue per violation per day for noncompliance with Section XI (Reimbursement of Costs); and Section XV (Civil Penalties and Supplemental Environmental Projects):

<u>Days of Violation</u>	<u>Amount/Day</u>
1-14 Days	\$500
15-30 Days	\$2,500
31 or more Days	\$5,000

c. All stipulated penalties will continue to accrue through the final day of the correction of the noncompliance or completion of the activity, unless stipulated penalties are tolled under Section XII (Dispute Resolution). If DEQ has knowledge of what it believes is an actual or potential violation of this Consent Order, then DEQ shall notify Bridger within seven days. Nothing in this Consent Order prevents the simultaneous accrual of stipulated penalties for separate violations of this Consent Order.

d. All penalties accruing under this Section will be due and payable to DEQ within 30 days of Bridger's receipt from DEQ of a demand for payment of the penalties, unless Bridger invokes the dispute resolution procedures under Section XII (Dispute Resolution).

e. Stipulated penalties must be paid by check or money order and made payable to the "Montana Department of Environmental Quality." Stipulated penalty payments and the accompanying transmittal letters must be sent to:

John L. Arrigo, Administrator
Enforcement Division
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

A copy of the transmittal letter must be sent to:

Thad Adkins
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

f. Penalties will continue to accrue up to the dispute resolution period and will be tolled until the DEQ Director issues a decision and need not be paid until 30 days after the dispute is resolved by agreement or by judicial decision. If Bridger prevails in the dispute resolution process, any penalties relating to that specific dispute will be voided.

g. If Bridger fails to pay stipulated penalties when due, DEQ may institute proceedings to collect the penalties, as well as interest. Bridger must pay interest on the unpaid balance, which will begin to accrue 30 days after the date of demand made pursuant to subsection (d) above. Nothing in this Consent Order will be construed as prohibiting, altering, or in any way limiting the ability of DEQ to seek any other remedies or sanctions available by virtue of Bridger's violation of this Consent Order or of the statutes and rules upon which it is based. Notwithstanding any other provision of this Section, DEQ may, in its unreviewable

discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Order.

h. DEQ hereby finds that the provisions of this Consent Order, including this Section, are designed to protect the public health, safety, and welfare and the environment by achieving a prompt, complete and efficient response and cleanup of the Discharge. These stipulated penalties provisions are integral and essential to the Parties' desire that the provisions of this Consent Order be, to the maximum extent achievable, self-executing and self-enforcing.

XV. CIVIL PENALTIES AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

58. The Parties have agreed that settlement of this matter, including the provisions of this Section, without litigation is the most appropriate means of resolving this matter.

59. Pursuant to Sections 75-5-611 and 75-5-631, MCA, the nature of the violations, Bridger's agreement to perform SEPs, and other relevant factors, DEQ assesses a civil penalty against Bridger in the amount of \$1,000,000. This total penalty will be divided between Bridger's cash payment to DEQ of \$200,000, and the successful implementation of DEQ-approved SEPs, instituted pursuant to the terms of this Section and involving expenditures no less than \$800,000.

60. Bridger consents to the issuance of this Consent Order and consents for the purposes of settlement to the payment of the civil penalty, including the performance of SEPs, cited in the foregoing paragraph. The Parties agree that DEQ decisions under this Section are not subject to Section XII (Dispute Resolution).

61. Within 60 days of the Effective Date of this Consent Order, Bridger must pay to DEQ a cash civil penalty in the amount of \$200,000. The civil penalty must be paid by check or money order, made payable to the "Montana Department of Environmental Quality," and sent to the Department in accordance with Paragraph 57.e.

62. This Section will not relieve Bridger of its obligation to comply with all applicable provisions of federal, state or local law nor will it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute DEQ approval of any equipment or technology installed by Bridger in connection with the SEP.

63. Bridger shall spend \$800,000 on SEPs. Bridger shall include all documentation of the expenditures made in connection with the SEPs as part of the SEP completion report required under Paragraph 67 (the “SEP Completion Report”).

a. Within 120 Days of the Effective Date of this Consent Order, Bridger shall submit to DEQ a SEP proposal(s) that describes the SEP(s), implementation, and a preliminary budget in accordance with the Montana Department of Environmental Quality, Enforcement Division’s *Supplemental Environmental Projects Policy* (Rev. April 1, 2008) (the “DEQ SEP Policy”). DEQ will review the SEP proposal(s), provide comments as necessary, and preliminarily approve or disapprove of the SEP proposal. The SEP proposal must conform to Section V of the DEQ SEP Policy.

b. Within 120 Days of DEQ’s preliminary approval of a SEP proposal, Bridger shall submit to DEQ a detailed SEP Plan (the “SEP Plan”) that describes the SEPs and its implementation, in accordance with the DEQ SEP Policy. The SEP Plan must include, but is not limited to: a detailed description of the SEP(s), budget, scheduled milestones, Contractors, and a description of the intended public health or environmental benefits. The SEP Plan must also include a provision demonstrating compliance with SEP Reporting Requirements set forth in Paragraph 67.

c. DEQ will review the SEP Plan and provide comments. Bridger shall adjust the SEP Plan in accordance with DEQ's comments, and resubmit the updated SEP Plan to DEQ within 30 Days of receipt of DEQ's comments. Upon DEQ approval of the SEP Plan, Bridger shall begin implementation of the SEP by the deadline provided in the DEQ-approved SEP Plan.

64. If, within one year of the Effective Date, the Parties are unable to agree on SEP(s) in the amount of \$800,000, then DEQ may require Bridger to pay the \$800,000.00 minus the amount of any DEQ-approved SEP(s).

65. Bridger shall not propose SEP(s) pursuant to this Consent Order that are otherwise required by any federal, state or local law or regulation; nor may Bridger propose pursuant to this Consent Order, SEP(s) required by any other agreement, grant or injunctive relief. Bridger shall certify compliance with this paragraph at the time of proposing any SEP.

66. If any Force Majeure event occurs that may delay completion of the SEP(s) and/or cause a failure to meet a scheduled milestone, Bridger shall provide notice and take all actions in conformity with Section XIII (Force Majeure).

67. SEP Reporting Requirements:

a. SEP Completion Report. The SEP Completion Report shall conform with Section V of the DEQ SEP Policy and contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any operating problems encountered and the solutions thereto;
- iii. Itemized costs;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this AOC and the DEQ-approved SEP Plan; and

v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

vi. In itemizing its costs in the SEP Completion Report, Bridger shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

b. Periodic Reports. Bridger shall submit any additional reports required by the SEP Plan to DEQ in accordance with the schedule and requirements recited therein (“Periodic Reports”).

c. Bridger agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections a. and b. above shall be deemed a violation of this Consent Order and Bridger shall become liable for stipulated penalties as set forth in Section XIV (Stipulated Penalties).

d. Respondent shall submit all notices and reports required by this Section to:

John J. Arrigo, Administrator
Enforcement Division
Montana Department of Environmental Quality

1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

68. Within 60 days after receipt of the SEP Completion Report, DEQ shall notify Bridger, in writing, regarding: i) any deficiencies in the SEP or the SEP Completion Report along with a grant of an additional 30 Days for Bridger to correct any deficiencies; or ii) indicate that DEQ concludes that the SEP and SEP Completion Report have been completed satisfactorily.

69. If upon review of the SEP Completion Report, DEQ determines that the actual cost of the SEP(s) did not meet or exceed \$800,000, Bridger shall pay DEQ the remainder of the difference of the required SEP cost amount and the actual SEP costs. DEQ will notify Bridger in writing of any required SEP payment within 60 days of receipt of the SEP Completion Report. Bridger shall pay the amount in accordance with Paragraph 57.e.

70. Any prepared public statement, oral or written in print, film, or other media, made by Bridger making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the Montana Department of Environmental Quality for violations of the Montana Water Quality Act."

XVI. COVENANT NOT TO SUE BY DEQ

71. Subject to the Reservation of Rights below, DEQ covenants not to sue, execute judgment or take any civil, judicial or administrative action under federal, state, local or common law (other than enforcement of this Consent Order), including requesting another State agency to initiate an action based on or resulting from the Discharge, or to seek any costs, penalties, contribution or attorneys' fees against Bridger and their divisions, subsidiaries, affiliates, any predecessors and successors in interest, and their officers, attorneys, directors, shareholders, members, employees, agents, contractors, subcontractors, and representatives for the investigation

and remediation of the Discharge, performance of the Work, the Discharge, past Remedial Action Costs, or Future Costs or to assess further civil or administrative penalties related to the Discharge arising from violations of State law, federal law, and any other provisions of law, including, but not limited to, the WQA and CECRA. This covenant not to sue and release in this Section shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Bridger of all obligations under this Consent Order, including, but not limited to, payment of Civil Penalties. This covenant not to sue and the release in this Section extends only to Bridger, and their divisions, subsidiaries, affiliates, any predecessors and successors in interest, and their officers, attorneys, directors, shareholders, members, employees, agents, contractors, subcontractors, and representatives and does not extend to any other person.

XVII. RESERVATION OF RIGHTS BY DEQ

72. Except as specifically provided in this Consent Order, nothing in this Consent Order limits the power and authority of DEQ to take, direct, or order all actions necessary to protect public health, safety, or welfare or the environment, or to prevent, abate, or minimize an actual or threatened release of hazardous or deleterious substances at or from the Discharge. Further, except as specifically provided in this Consent Order, nothing in this Consent Order prevents DEQ from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Bridger in the future to perform additional activities pursuant to the WQA, CECRA, or any other applicable law.

73. Nothing in this Consent Order precludes DEQ from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not Parties to this Consent Order. Nothing herein diminishes the right of DEQ to pursue any such

persons to obtain additional remedial action costs or remedial action, or to enter into other settlements.

74. General Reservations of Rights. This Consent Order is without prejudice to all rights DEQ may have against Bridger with respect to all matters not expressly included within DEQ's covenants. Notwithstanding any other provision of this Consent Order, the State reserves all rights against Bridger with respect to:

- a. liability for failure by Bridger to meet a requirement of this Consent Order;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of assessing and litigating any claims for natural resource damages;
- c. criminal liability;
- d. liability for past, present, or future disposal, discharge or threat of discharge of pollution unrelated to the Discharge; and
- e. liability for violations of federal or State law that occur during or after implementation of the Work.

XVIII. COVENANT NOT TO SUE BY BRIDGER

75. Other than as set forth in Section XII (Dispute Resolution), Bridger covenants not to sue and agrees not to assert any and all direct or indirect claims or causes of action against the State of Montana, or its departments, agencies, instrumentalities, officials, agents, contractors, subcontractors, employees and representatives, arising out of or related to the Discharge, the Work, DEQ Remedial Action Costs, or this Consent Order, including, but not limited to:

- a. Any claim under federal, state or local statutory or common law;

b. Any claim, including, but not limited to, contribution claims, motions for joinder and third-party claims, related to any and all lawsuits involving third parties;

c. Any direct or indirect claim for reimbursement from the Environmental Quality Protection Fund established in Section 75-10-704, MCA, the Orphan Share Account established in Section 75-10-743, MCA, or any other State of Montana fund; and

d. Claims based on DEQ's oversight of the Work under CECRA, WQA, or any other provision of law.

XIX. RESERVATION OF RIGHTS BY BRIDGER

76. Except as specifically provided in this Consent Order, Bridger retains all rights and defenses it now has or may have as to such other matters.

77. Bridger expressly reserves all rights and defenses against the State with respect to liability for damages for injury to, destruction of, or loss of natural resources and for the costs of assessing and litigating any claims for natural resource damages. As provided in Section XVII, this Consent Order does not address or affect claims or liability for natural resource damages.

XX. OTHER CLAIMS

78. Except as expressly provided in Section XVI (Covenant Not to Sue by DEQ), nothing in this Consent Order constitutes a satisfaction of or release from any claim or cause of action against any other person not a Party to this Consent Order, for any liability such person may have under the WQA, CECRA, other statutes, or common law.

XXI. INDEMNIFICATION

79. By issuance of this Consent Order, DEQ assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Bridger.

80. Bridger must indemnify, save and hold harmless the State, its departments, agencies, instrumentalities, officials, agents, employees and representatives (collectively "State

of Montana Indemnitees”) from any and all third-party claims or causes of action arising in whole or in part from, or on account of, negligent or other wrongful acts or omissions of Bridger, its officers, directors, employees, agents, Contractors, or subcontractors, or any persons acting on its behalf or under its control, in carrying out the Work pursuant to this Consent Order. This indemnification specifically includes any joinder of the State to an action between Bridger and any third party. The State will require its contractors and subcontractors to maintain general liability and vehicle liability insurance with the contractor’s or subcontractor’s insurance as primary insurance with respect to the State of Montana Indemnitees. The State shall not intentionally waive, take, or commit any action that has the effect of waiving or materially diminishing, any affirmative defense to any claim or lawsuit for which the State seeks indemnification from Bridger.

81. In addition, Bridger agrees to pay the State all reasonable costs incurred by the State, including but not limited to reasonable attorneys’ fees and other reasonable expenses of litigation and settlement, arising from or on account of claims made against the State based on negligent or other wrongful acts or omissions of Bridger, its officers, directors, employees, agents, Contractors, subcontractors and any persons acting on their behalf or under its control, in carrying out the Work pursuant to this Consent Order.

82. The State must not be held out as a party to any contract entered into by or on behalf of Bridger in carrying out activities pursuant to this Consent Order. Neither Bridger nor any of its officers, directors, employees, agents, Contractors, subcontractors and any persons acting on their behalf or under its control will be considered an agent of the State.

83. The State must give Bridger notice consistent with Section VII (Notices) of any claim for which the State plans to seek indemnification within 45 days of the State’s receipt of the claim and must provide an opportunity for Bridger to raise objections thereto prior to settling

such claim. Bridger must notify the State of its determination whether it is required to and will defend and indemnify the State within 30 days of its receipt of notice. In the event that Bridger is required to indemnify the State pursuant to this section, Bridger has the primary authority to resolve and/or defend against any such claim.

84. Bridger waives all claims against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between Bridger and any person for performance of Work on or relating to the Discharge, including, but not limited to, claims on account of construction delays. In addition, Bridger must indemnify and hold harmless the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Bridger and any person for performance of Work on or relating to the Discharge, including, but not limited to, claims on account of construction delays.

XXII. MODIFICATIONS

85. DEQ may make modifications to any Deliverable in writing. If DEQ unilaterally modifies a Deliverable, then such modification must be noted by Bridger in a cover letter to the document. Such cover letter will become part of the Deliverable or Schedule as an attachment to the document. Any other requirements of this Consent Order may be modified in writing by mutual agreement of the Parties. For purposes of this paragraph, written notice must be consistent with Section VII (Notices). After complying with the requirements of this Section, Bridger will have the right to invoke the dispute resolution provisions of Section XII if it disagrees with DEQ's modifications, and Bridger's requirement to pay Remedial Action Costs in regards to this paragraph will be tolled pending conclusion of the dispute resolution process.

86. If Bridger seeks permission to deviate from any DEQ-approved Deliverable or Schedule, Bridger must submit a written request to DEQ for approval outlining the proposed

modification and its basis. Bridger may not proceed with the requested deviation until receiving written approval from DEQ. For purposes of this paragraph, written approval includes an email to be followed by a formal letter, provided that DEQ's failure to send a formal letter does not revoke the approval.

87. No informal advice, guidance, suggestion, or comment by DEQ regarding a Deliverable, Schedule, or any other writing submitted by Bridger will relieve Bridger of its obligation to obtain any formal approval required by this Consent Order, or to comply with all requirements of this Consent Order, unless it is formally modified.

XXIII. INTEGRATION/APPENDICES

88. This Consent Order and any Deliverables that will be developed pursuant to this Consent Order and become incorporated into, and enforceable under, this Consent Order constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order.

XXIV. TERMINATION AND SATISFACTION

89. This Consent Order will terminate when Bridger certifies that all activities required under this Consent Order, including SEPs, have been performed (the "Certification"), and DEQ has approved the Certification. DEQ must approve or disapprove the Certification within 3 months of Bridger's submittal of the Certification. Sections I (Jurisdiction and General Provisions), IX (Record Retention), XI (Reimbursement of Costs), XVI (Covenant Not to Sue by DEQ), XVII (Reservation of Rights by DEQ), XVIII (Covenant Not to Sue by Bridger), XIX (Reservation of Rights by Bridger), XX (Other Claims), XXI (Indemnification), XXIV (Termination and Satisfaction), and XXV (Authenticity of Data) will survive termination of this

Consent Order. If DEQ approves the Certification, Bridger will not be liable for any additional response actions related to the Discharge, except if, subsequent to the Certification, conditions related to the Discharge, previously unknown to DEQ, are discovered, or new information is received by DEQ that indicates that the Work is not adequate to protect the public health, welfare or safety, or the environment.

XXV. AUTHENTICITY OF DATA

90. The Parties stipulate to the authenticity of validated sampling or monitoring data generated in accordance with DEQ or EPA-approved work plans for the Discharge, without objection, in any administrative or judicial proceeding under this Consent Order.

XXVI. EFFECTIVE DATE

91. This Consent Order will become effective after the Consent Order is signed by DEQ following the notice and public comment period referenced in Section XXVIII.

XXVII. AUTHORITY OF SIGNATORIES

92. Each of the signatories of this Consent Order states that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the Party represented by him or her to the Consent Order.

XXVIII. NOTICE AND PUBLIC COMMENT

93. After signature by Bridger, but before final approval and signature by DEQ, DEQ must make this Consent Order available for public comment for 30 days, as required by Section 75-10-723(2), MCA, and in accordance with Section 75-10-713, MCA.

94. After completion of the notice and comment period described in Paragraph 93, DEQ may withdraw or withhold consent of this Consent Order or may request changes to the Consent Order based on the comments received. If DEQ requests changes, Bridger may elect to withdraw its consent, and will have no obligations under this Consent Order. Otherwise, Bridger

consents to DEQ approval and the binding effectiveness of this Consent Order without further notice.

IT IS SO AGREED:

STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Tom Livers, Director

Date _____

Thad Adkins, DEQ Legal Counsel

Date _____

BRIDGER PIPELINE LLC

H.A. True III, Member, Bridger Pipeline LLC

Date _____

John J. Blomstrom, General Counsel

Date _____