

FILED

SEP 11 2013

Clerk, U.S. District Court
District Of Montana
Helena

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ATLANTIC RICHFIELD
COMPANY,

Defendant.

No. CV-89-39-BU-SEH

ORDER

The United States has moved for entry of the Consent Decree for Settlement of Interim Past Response Costs lodged with the Court on June 6, 2013. The motion is unopposed.

ORDERED:

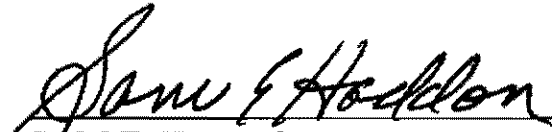
1. The United States' Motion to Enter Consent Decree for Settlement of Interim Past Response Costs¹ is GRANTED.

2. The Consent Decree lodged with the Court on June 6, 2013, shall be

¹ Document No. 1127

entered concurrently with this Order.

DATED this 11th day of September, 2013.



SAM E. HADDON
United States District Judge

FILED

SEP 11 2013

Clerk, U.S. District Court
District Of Montana
Helena

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

UNITED STATES OF AMERICA,)	No. CV-89-039-BU-SEH
)	
Plaintiff)	
)	
vs.)	CONSENT DECREE FOR
)	SETTLEMENT OF
ATLANTIC RICHFIELD COMPANY,)	INTERIM PAST RESPONSE COSTS
)	
Defendants.)	

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I. BACKGROUND

THE UNITED STATES' COMPLAINT

1. In 1989, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter ("Complaint") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607, against the Atlantic Richfield Company ("AR").

2. In the Complaint, which was subsequently amended on October 14, 1992, October 31, 1994, August 2, 2003 and November 5, 2004, the United States sought the recovery of past response costs and a declaratory judgment of liability for future response costs paid at or in connection with the Original Portion of the Silver Bow Creek/Butte Area National Priorities List ("NPL") Site, the Milltown Reservoir Sediments NPL Site (now referred to as the "Milltown Reservoir/Clark Fork River NPL Site"), and the Anaconda Smelter NPL Site. The November 5, 2004 amendment added an area known as the Butte Priority Soils Operable Unit to the Complaint.

3. In response to the United States' Complaint, AR asserted defenses and filed counterclaims against the United States, seeking cost recovery, contribution, contractual indemnity, equitable indemnification, recoupment and declaratory relief.

SETTLEMENT FRAMEWORK

4. In November of 1998, the United States and AR reached a settlement regarding the claims of the United States at a portion of the Silver Bow Creek/Butte Area NPL Site – the Streamside Tailings Operable Unit ("Streamside Tailings Consent Decree"). The Streamside Tailings Consent Decree, together with a consent decree entered in the case of *Montana v. Atlantic Richfield*, No. CV-83-317-H-SEH, both of which were entered on April 19, 1999, also resolved most of the natural resource damages claims of the United States and the State of Montana ("State"), and all of the natural resource damages claims of the Confederated Salish and Kootenai Tribes ("Tribes") against AR. The Streamside Tailings Consent Decree also

established a framework for resolving the United States' remaining claims throughout the Clark Fork River Basin in Montana. Under Section VII of the Streamside Tailings Consent Decree, the parties agreed to resolve the remaining areas in six groups or "baskets" of Operable Units:

- i. Rocker Site;
- ii. Butte Mine Flooding (Berkeley Pit) Site and the Butte Active Mining Area Site;
- iii. Anaconda Smelter Site;
- iv. Clark Fork River Operable Unit, Warm Spring Ponds Operable Units and the Milltown Reservoir Operable Units;
- v. Butte Priority Soils (towns of Butte and Walkerville) Site; and
- vi. The Westside Soils Site formerly referred to as Non Priority Soils Operable Unit in paragraph 31(F) of the Streamside Tailings Consent Decree (rural Butte).

5. The United States and AR have already successfully concluded their negotiations for the Rocker and Butte Mine Flooding Sites and for the Milltown Reservoir and Clark Fork River Operable Units. The Rocker Site Consent Decree was entered in November of 2000, the Butte Mine Flooding Site Consent Decree was entered in August of 2002, the Milltown Reservoir Operable Unit Consent Decree was entered in February of 2006 and the Clark Fork River Operable Unit Consent Decree was entered in February of 2008.

6. In addition, the United States and AR negotiated a consent decree entitled Consent Decree for Settlement of Remaining Sites Past Response Costs that was entered by this Court on January 24, 2005 ("Past Costs Consent Decree"). The Past Costs Consent Decree addressed response costs incurred responding to hazardous substance contamination at certain Operable Units above, the so-called "Remaining Sites." It provided, *inter alia*, for reimbursement of EPA costs paid through July 31, 2002 and the United States Department of Justice ("DOJ") costs incurred through October 7, 2002 (the subsequent Clark Fork River Operable Unit Consent Decree settled DOJ costs through April 28, 2007 and certain EPA costs) pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The Past Costs Consent Decree also resolved, subject to AR's reservations found in Paragraph 20 of the Past Costs Consent Decree, all counterclaims and most defenses asserted by AR against the United States in this action and addressed related covenants and reservations for the Remaining Sites.

7. The Streamside Tailings Consent Decree described the baskets of operable units to be negotiated in the order described above, but it also provided the parties with flexibility to change this order. Consistent with this flexible framework, the parties commenced negotiations to next address the United States' claims against AR for certain past response costs paid by the United States relating to the Anaconda Smelter Site and Warm Springs Ponds Operable Units from August 1, 2002 through December 31, 2010. These past response costs are the Interim Past Response Costs defined below in Paragraph 14.p.

8. The Interim Past Response Costs arise out of the following facts:

a. Butte, Montana has been the site of nearly continuous mining and milling activities from the 1860s to the present. Smelting activities also occurred in Butte from the 1870s to the early 1920s. Significant milling and smelting activity occurred in and around Anaconda, Montana from the early 1880s until the New Works Smelter was closed in 1980. Wastes from these operations containing hazardous substances have been released into the environment.

b. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA listed the original Silver Bow Creek Site on the NPL of Superfund Sites by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658. As originally listed, the Silver Bow Creek Site began at the headwaters of Silver Bow Creek and was characterized as being 28 stream miles long and included the Warm Springs Pond complex. The original Silver Box Creek Site was amended to include large areas in and around Butte on July 22, 1987, 52 Fed. Reg. 27627, and is now known as the Silver Bow Creek/Butte Area Superfund Site. In February of 1990, the Clark Fork River portion of the Silver Bow Creek/Butte Area Superfund Site was administratively transferred to the Milltown Reservoir Superfund Site. The Milltown Reservoir Superfund site (now known as the Milltown/Clark Fork River Superfund Site) and the Anaconda Smelter Superfund Site were placed on the NPL by publication in the Federal Register on September 8, 1983. These Sites, together with the Montana Pole and Treating Plant NPL Site, are known collectively as the Clark Fork Basin NPL Sites.

c. In response to the release or threatened release of hazardous substances at or from these Clark Fork Basin NPL Sites, including the Anaconda Smelter Site and Warm

Springs Ponds Operable Units, significant response activities have occurred and are occurring to address hazardous substances there.

9. By entering into this Consent Decree, AR and the United States do not admit any liability arising out of the transactions or occurrences that were alleged, or could have been alleged, in the Complaint, amended complaints or counterclaims filed in this action.

10. The United States and AR agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, in the public interest and consistent with the goals of CERCLA.

II. JURISDICTION

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Sections 1331 and 1345 and 42 U.S.C. Sections 9607 and 9613(b). This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of this Court or to venue in this District. AR shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

12. This Consent Decree is binding upon the United States and upon AR, as defined below, and its 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 status or responsibilities of AR under this Consent Decree.

IV. EFFECT OF PRIOR CONSENT DECREE

13. Except as expressly provided in this Consent Decree, all terms of the Past Costs Consent Decree remain in full force and effect and are not modified by this Consent Decree.

V. DEFINITIONS

14. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Anaconda Smelter Site" shall mean the area surrounding and including Anaconda, Montana addressed in the 1987 Mill Creek Operable Unit Record of Decision, the 1991 Flue Dust Operable Unit Record of Decision, the 1994 Old Works / East Anaconda Development Area Operable Unit Record of Decision, the 1996 Community Soils Operable Unit Record of Decision, the 1998 Anaconda Regional Water Waste and Soils Operable Unit Record of Decision, and any associated minor modifications, explanations of significant differences, and Record of Decision amendments and errata sheets for the Anaconda Smelter NPL Site, including all related removal actions, ground water, surface water, sediments, solid media, and stormwater.

b. "AR" shall mean the Defendant, Atlantic Richfield Company, its divisions and subsidiaries, including ARCO Environmental Remediation L.L.C. ("AERL"), and any predecessors in interest. It shall also mean any successors in interest to the extent that any such successor's liability for Interim Past Response Costs derives from the liability of the Atlantic Richfield Company, its divisions and subsidiaries, including AERL, and any predecessors in interest.

c. "Butte Priority Soils Site" shall mean that area described in the 2006 Butte Priority Soils Operable Unit, Silver Bow Creek/Butte Area NPL Site Record of Decision and any associated minor modifications, explanations of significant differences, and Record of Decision amendments and errata sheets, including all related removal actions, ground water, surface water, sediments, solid media, and stormwater.

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

e. "Clark Fork River Basin" shall mean the main stem of the Clark Fork River to the Idaho border and all areas within Montana that naturally drain into the Clark Fork River or its tributaries.

f. "Clark Fork River Operable Unit" shall mean the site described in the Record of Decision for the Clark Fork River Operable Unit issued by EPA and dated April 2004.

g. "Consent Decree" shall mean this Consent Decree.

h. "Cost Documentation" shall mean a cost package for EPA's costs which consists of applicable: (i) payroll information, consisting of the SCORPIO\$ report or an equivalent cost summary, and any timesheets that exist, if requested by AR; (ii) indirect cost information, consisting of an overall and an employee-by-employee SCORPIO\$ report or equivalent cost summary; (iii) travel information, consisting of a SCORPIO\$ report or an equivalent cost summary, travel authorizations and travel vouchers or their equivalent that exist; (iv) EPA contractor (including Contract Laboratory Program contracts) information, consisting of site and/or Operable Unit (as this term is defined below) specific vouchers, any existing progress reports, Treasury schedules, tasking documents for contractors not required to provide progress reports, Annual Allocation Reports and the SCORPIO\$ report or an equivalent cost summary; (v) EPA Interagency Agreements ("IAGs") information, consisting of SCORPIO\$ reports or an equivalent cost summary, IAGs and any amendments thereto, invoices or the equivalent, proof of payment documents, and any existing progress reports or their equivalent; (vi) EPA Cooperative Agreements information, consisting of SCORPIO\$ reports or an equivalent cost summary, cooperative agreements and any amendments thereto, drawdown documentation, State quarterly progress reports; (vii) prejudgment interest information, consisting of an interest cost report showing methodologies and calculations; and (viii) Operable Unit allocated cost information, consisting of a narrative of allocation methodologies and spreadsheets implementing such methodologies. Because the State has incurred costs and may continue to incur costs under cooperative agreements with EPA, which relate to or are allocated to the Remaining Sites, Cost Documentation for these expenditures, if requested by AR, shall include (a) State contractor invoices, (b) any existing contractor progress reports, and (c) Form 661 SBAS information (if not included in the State quarterly progress reports) or its equivalent. EPA may also provide the information described in the foregoing list of "Cost Documentation" in the form of printouts from electronic databases or systems that have been or may be developed by EPA in the future. "Cost Documentation" for response costs incurred by the Department of Justice shall consist of a cost summary of (a) direct labor costs,

(b) other direct costs (invoices, travel, etc.), and (c) indirect costs, and upon request by AR, shall also consist of the supporting reports for each of these three types of DOJ costs.

i. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

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

k. "Effective Date" shall mean the date on which this Consent Decree becomes effective pursuant to Section XV of this Consent Decree.

l. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of that Agency.

m. "EPA Hazardous Substance Superfund" shall mean the hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

n. "Federal Action" shall mean *United States v. Atlantic Richfield Company*, No. CV-89-039-SEH (D. Mont.).

o. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

p. "Interim Past Response Costs" shall mean all costs including but not limited to direct and indirect costs that EPA paid at or in connection with the Warm Springs Ponds Operable Units and the Anaconda Smelter Site, from August 1, 2002 through December 31, 2010, including without limitation oversight costs and allocable Clark Fork general and site-wide costs, interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) as described herein, and all costs incurred by the United States Department of Justice in litigating the Federal Action from April 29, 2007 through December 31, 2010.

q. "NPL" shall mean the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B.

r. "Operable Unit" shall mean an area, geographic or otherwise, for which there is a response action, whether removal or remedial, that is subject to a separate administrative record and response selection decision.

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

t. "Parties" shall mean the United States and AR.

u. "Past Costs Consent Decree" shall mean the Consent Decree for Settlement of Remaining Sites Past Response Costs that was entered by this Court in the Federal Action on January 24, 2005.

v. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

w. "Settling Defendant" shall mean AR.

x. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities.

y. "Warm Springs Ponds Operable Units" shall mean the active area, inactive area and Mill-Willow Bypass area addressed in EPA Records of Decision dated September 27, 1990 and June 30, 1992, and any associated minor modifications, explanations of significant differences, and Record of Decision amendments and errata sheets, including all related removal actions, ground water, surface water, sediments, solid media, and stormwater.

VI. OBJECTIVES OF THE PARTIES

15. The objectives of the Parties in entering into this Consent Decree are to resolve the claims of the United States against AR for all Interim Past Response Costs.

VII. REIMBURSEMENT OF RESPONSE COSTS

16. The Clark Fork River Basin Remaining Sites Special Account. EPA has established a special account within the EPA Hazardous Substance Superfund called the Clark Fork River Basin Remaining Sites Special Account (also known as the Clark Fork River Basin Special Account). The amounts paid by AR to the United States under Paragraph 17 (AR's Payment of Interim Past Response Costs) shall be deposited in the Clark Fork River Basin Remaining Sites Special Account within the EPA Hazardous Substance Superfund to be retained and used to

conduct or finance response actions at or in connection with any sites within the Clark Fork River Basin or to be transferred by EPA to the EPA Hazardous Substance Superfund.

17. AR's Payment of Interim Past Response Costs. AR agrees to pay a total of **twenty-one million, thirty thousand dollars (\$21,030,000.00)** for Interim Past Response Costs, plus interest on these response costs until the date of payment, in the manner described below.

a. Within (twenty) 20 days after entry of this Consent Decree, AR shall pay **fifteen million, seven hundred seventy-two thousand five hundred dollars (\$15,772,500)** to the Clark Fork River Basin Remaining Sites Special Account of the EPA Hazardous Substance Superfund for Interim Past Response Costs in the manner described in Paragraph 17.c below. No later than one year after entry of this Consent Decree, AR shall pay **five million, two hundred fifty-seven thousand five hundred dollars (\$5,257,500)**, plus interest on that amount calculated from the date of lodging of the Consent Decree through the date of AR's payment. These payments shall be made by AR in the manner described in Paragraph 17.c below. AR shall have the right to prepay either or both of these payments.

b. EPA shall submit to AR a bill for interest on the sum of **twenty-one million, thirty thousand dollars (\$21,030,000.00)** from July 26, 2012 for Clark Fork General Site costs (08-99) and from August 24, 2012 for Anaconda Smelter Site and Warm Springs Ponds Operable Units costs addressed in this Consent Decree through the date of lodging of the Consent Decree, which will describe interest calculations in summary form, within thirty (30) days after lodging of the Consent Decree. Within thirty (30) days after entry of the Consent Decree, AR shall pay such interest to the Clark Fork River Basin Remaining Sites Special Account of the EPA Hazardous Substance Superfund for Remaining Sites Past Response Costs in the same manner and subject to the same terms described in Paragraph 17.c of the Consent Decree.

c. The payments made under this Paragraph shall be made either by FedWire Electronic Fund Transfer ("EFT" or wire transfer) to the appropriate DOJ account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 89V0279, the EPA Region and Site/Spill ID # 08-99, and DOJ case number 90-11-2-430, or by

certified or cashier's checks made payable to the United States referencing U.S.A.O. file number 89V0279, the EPA Region and Site/Spill ID # 08-99, and DOJ case number 90-11-2-430.

Payment shall be made in accordance with instructions provided to AR by the Financial Litigation Unit of the United States Attorney's Office for the District of Montana following lodging of this Consent Decree. Any payments received by DOJ after 4:00 P.M. (Eastern Time) will be credited on the next business day. AR shall send notice that such payment has been made to the United States as specified in Section (Notices and Submissions) and to Cost Recovery Coordinator, US EPA Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana 59624 and to Director of Financial Management Programs, US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202.

18. Interest on Late Payments. In the event that any payment required by Paragraph 17 (AR's Payment of Interim Past Response Costs) or Paragraph 20 (Stipulated Penalties) is not received when due, then AR shall pay interest on the unpaid balance from the Effective Date of this Consent Decree through the date that such payment is made. AR's payment of interest under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of AR's failure to make timely payments under this Paragraph. AR shall make all payments required by this Paragraph in the manner described in Paragraph 17.c.

19. Drawdown on AR's Reserve.

a. Paragraph 35 of the Streamside Tailings Consent Decree established a \$15 million reserve ("AR's Reserve") as an incentive toward future settlements of past costs and work to be performed by AR under that consent decree's settlement framework. The Streamside Tailings Consent Decree also provided: "if the United States and AR reach a settlement and lodge a consent decree with respect to the Milltown Site, the Clark Fork River Operable Unit and the Warm Springs Ponds Operable Units by the timeframes set forth in that decree, AR may use \$7,500,000 of the funds from AR's Reserve to reimburse the United States."

b. Under the terms of the Past Costs Consent Decree, AR used \$3,000,000 of the funds from AR's Reserve to reimburse the United States. The consent decree settlements in the Federal Action for the Rocker and Butte Mine Flooding Sites and for the Milltown Reservoir and Clark Fork River Operable Units were entered without reference to use of funds from AR's

Reserve to reimburse the United States. Because payments by AR pursuant to this Consent Decree reimburse the United States for response costs at the Warm Springs Ponds Operable Units and the Anaconda Smelter Site, the remaining funds in AR's Reserve may be used to reimburse the United States and AR's Reserve is extinguished.

VIII. STIPULATED PENALTIES

20. Stipulated Penalties.

a. If any amounts due to EPA from AR under this Consent Decree are not paid by the required date, AR shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 18 (Interest on Late Payments), the following amounts per violation per day that such payment is late:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1 st through 14 th day
\$5,500	15 th through 30 th day
\$7,500	31 st day and beyond

b. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of AR's receipt from EPA of a demand for payment of the stipulated penalties.

c. For all other violations of this Consent Decree, AR shall pay a stipulated penalty of \$1,000 per day per violation.

d. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to one of the following addresses:

VIA REGULAR MAIL:

Mellon Bank
 Attn: Superfund Accounting
 Lockbox 360859
 Pittsburgh, PA 15251-6859

VIA EXPRESS MAIL:

Mellon Bank REF: Lockbox 360859
 3 Mellon Bank Center
 Room #153-2713
 Pittsburgh, PA 15259

e. Each such payment shall indicate that the payment is for stipulated penalties and shall reference the EPA Region and Site/Spill ID #08-22, the DOJ Case Number 90-11-2-430 and the name and address of the party making payment. Copies of check(s) paid pursuant to this Paragraph and any accompanying transmittal letter(s) shall be sent to the

United States as provided in Section XI (Notices and Submissions), and to Cost Recovery Coordinator, US EPA Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana 59624 and to Director of Financial Management Programs, US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified AR of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day that a violation occurs and shall continue to accrue through the final day of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

21. If the United States brings an action to enforce this Consent Decree, AR shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of AR's failure to comply with the requirements of this Consent Decree.

23. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

IX. COVENANTS AND RESERVATIONS BY THE UNITED STATES

24. United States' Covenant for Interim Past Response Costs for AR. In consideration of the payments that will be made by AR under the terms of this Consent Decree, and except as specifically provided in Paragraph 25 (United States' General Reservation of Rights as to AR), the United States covenants not to sue or to take administrative action against AR and against AR's officers, directors and employees to the extent that the liability of such officers, directors and employees arises solely from their status as officers, directors and employees, for Interim Past Response Costs under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613. This covenant not to sue is conditioned upon the satisfactory performance by AR of its obligations under this Consent Decree. This covenant not to sue shall take effect upon the United States'

receipt of all payments made by AR under Paragraph 17 of this Consent Decree and extends only to AR and AR's officers, directors and employees, and does not extent to any other person.

25. United States' General Reservations of Rights as to AR. The covenant set forth in Paragraph 24 (United States' Covenant for Interim Past Response Costs for AR) does not pertain to any matters other than those expressly specified in that Paragraph. The United States reserves, and this Consent Decree is without prejudice to, all rights against AR with respect to all other matters, including but not limited to, the following:

a. claims to enforce this Consent Decree based on a failure by AR to meet a requirement of this Consent Decree;

b. claims for response costs incurred or to be incurred by the United States that are not within the definition of Interim Past Response Costs and that have not been previously settled in consent decrees entered by this Court;

c. claims for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and

d. claims for criminal liability.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party this Consent Decree. Each of the Parties expressly reserves any and all rights (including but not limited to any right to contribution), defenses, claims, demands and causes of action which each Party may have with respect to any matter, transaction or occurrence relating in any way to the Anaconda Smelter Site and Warm Springs Ponds Operable Units against any person not a Party hereto.

27. The Parties agree, and by entering this Consent Decree the Court finds, that AR and the United States are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2) for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Interim Past Response Costs. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA for the matters addressed in this Consent Decree.

28. AR agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. AR also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, AR shall notify EPA and DOJ within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

29. Waiver of Claim-Splitting Defenses.

a. In any subsequent administrative or judicial proceeding initiated by the United States (i) for injunctive relief, recovery of response costs or other relief relating to any of the Remaining Sites, or (ii) for other claims reserved in Paragraph 25 (United States' General Reservations of Rights as to AR), AR shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, *however*, that nothing in this Paragraph affects the enforceability of the covenant not to sue by the United States set forth in Section IX (Covenants and Reservations by the United States).

b. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs or other appropriate relief relating to any of the Remaining Sites, the United States shall not use any provision of this Consent Decree to assert and 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 or defenses raised by AR in the subsequent proceeding were or should have been brought or raised in the instant case.

XI. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give

notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ and AR, respectively.

AS TO THE UNITED STATES:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ #90-11-2-430

As to EPA:

Director, Montana Office
U.S. Environment Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

D. Henry Elsen, Attorney
U.S. Environment Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

As to AR:

Marcus Ferries, P.E.
OB&C Portfolio Manager
Atlantic Richfield Company
501 Westlake Park Boulevard
Houston, Texas 77079

Jean A. Martin, Esq.
Senior Attorney, HSSE
Atlantic Richfield Company
501 Westlake Park Boulevard
Houston, Texas 77079

XII. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIII. INTEGRATION

32. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment, in accordance with 28 C.F.R. §50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. AR consents to the entry of this Consent Decree without further notice.

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

XV. EFFECTIVE DATE

35. The Effective Date of this Consent Decree shall be the date it is entered by the Court.

XVI. SIGNATORIES/SERVICE

36. The undersigned representatives of AR, the Environment and Natural Resources Division of the United States Department of Justice and the United States Environmental Protection Agency, each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

37. AR shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of AR with respect to all matters arising under or relating to this Consent Decree. AR hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

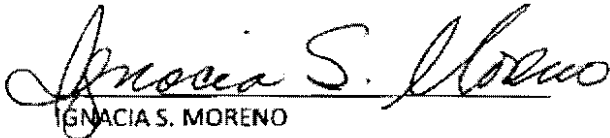
38. AR hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified AR in writing that it no longer supports entry of the Consent Decree.

39. Rule 54(b) Final Judgment. Upon the Court's approval of the Consent Decree, the Consent Decree shall be entered as a final judgment under Fed. R. Civ. P. 54(b). The Court expressly determines that there is no just reason for delay in entering this judgment.

SO ORDERED THIS 11th DAY OF September 2013.

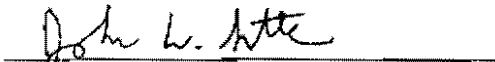

United States District Judge

FOR THE UNITED STATES OF AMERICA



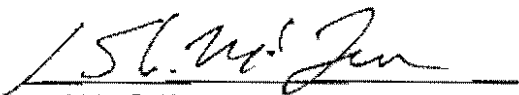
IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington DC 20530

6/3/13
Date



JOHN W. SITHER
JAMES D. FREEMAN
Senior Attorneys
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington DC 20044-7611

6/3/13
Date



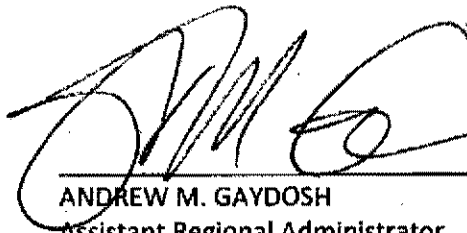
KRIS MCLEAN
Assistant United States Attorney
District of Montana
105 East Pine, 2nd Floor
Missoula, Montana 59802

6/5/13
Date



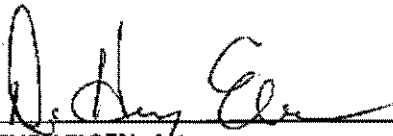
JULIE DALSOGLIO
Region 8 Montana Office Director
U.S. Environmental Protection Agency
10 West 15th Street, Suite 3200
Helena, Montana 59626-0096

5/23/13
Date



ANDREW M. GAYDOSH
Assistant Regional Administrator
Office of Enforcement, Compliance & Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

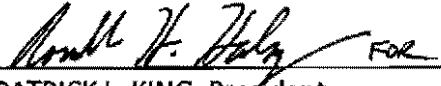
5/21/13
Date



D. HENRY ELSEN, Attorney
Legal Enforcement Program
USEPA Region 8 Montana Director
10 West 15th Street, Suite 3200
Helena, Montana 59626-0096

5/3/13
Date

FOR THE ATLANTIC RICHFIELD COMPANY



PATRICK L. KING, President
Atlantic Richfield Company
201 Helios Way, Helios Plaza 6.391A
Houston, Texas 77079

Apr. 25, 2013
Date

WILLIAM J. DUFFY
(Authorized to accept service of process by mail on behalf of AR in this matter)
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

Date

RICHARD O. CURLEY, JR.
Curley & Associates LLC
21982 Paradise Circle
Golden, Colorado 80401

Date

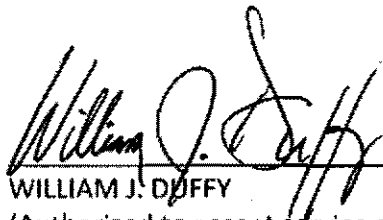
KYLE GRAY
Holland & Hart LLP
401 North 31st Street, Suite 1500
Billings, Montana 59101

Date

FOR THE ATLANTIC RICHFIELD COMPANY

PATRICK L. KING, President
Atlantic Richfield Company
201 Helios Way, Helios Plaza 6.391A
Houston, Texas 77079

Date

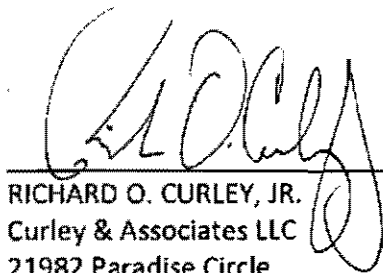


WILLIAM J. DUFFY

4-24-2013

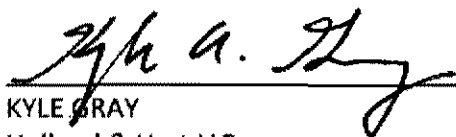
Date

(Authorized to accept service of process by mail on behalf of AR in this matter)
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202



RICHARD O. CURLEY, JR.
Curley & Associates LLC
21982 Paradise Circle
Golden, Colorado 80401

4/29/2013
Date



KYLE GRAY

4-23-2013

Date

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APPROVED AS TO FORM AND CONTENT:



JEAN A. MARTIN

Senior Counsel - HSSE

Atlantic Richfield Company

501 Westlake Park Boulevard, Room 16.184

Houston, Texas 77079

April 29, 2013

Date