UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

ANACONDA SMELTER SUPERFUND SITE, REGIONAL WATER, WASTE, AND SOILS OPERABLE UNIT, NORTH OPPORTUNITY REMEDIAL DESIGN UNIT, WEST GALEN EXPANSION AREA, WORK AREA NO. 2,

ATLANTIC RICHFIELD COMPANY,

RESPONDENT.

PROCEEDING UNDER SECTION 106(a) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED, 42 U.S.C. § 9606(a).

EPA Docket No. CERCLA-08-2005-0007

ADMINISTRATIVE ORDER FOR REMEDIAL ACTION

TABLE OF CONTENTS

I. Introduction and Jurisdiction 1

II. Findings of Fact 1

III. Conclusions of Law and Determinations 3

IV. Notice to the State 4

V. Order 4

VI. Definitions 4

VII. Notice of Intent to Comply 6

VIII. Parties Bound 6

IX. Work to Be Performed 7

X. Failure to Attain Performance Standards 8

XI. EPA Periodic Review 9

XII. Additional Response Actions 9

XIII. Endangerment and Emergency Response 9

XIV. EPA Review of Deliverables 10

XV. Reporting Requirements 10

XVI. Quality Assurance, Sampling, and Data Analysis 12

XVII. Compliance with Applicable Laws 13

XVIII. Remedial Project Manager 13

XIX. Access and Data/Document Availability 15

XX. Record Preservation 16

XXI. Assurance of Ability to Complete Work 16

XXII. United States Not Liable 18

XXIII. Enforcement and Reservations 19

XXIV. Effective Date and Computation of Time 20

XXV. Opportunity to Confer 20

ATTACHMENTS

Exhibit 1. Record of Decision for Anaconda Regional Water, Waste, and Soils Operable Unit, September 29, 1998

Exhibit 2. Remedial Action Work Plans for West Galen Expansion Areas Numbers 1 and 2, and West Galen Expansion Area Final Design Report, January 2005

Exhibit 3. EPA approval letter of June 15, 2005

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondent to perform a remedial action for West Galen Expansion Area Number 2, which is an addition to North Opportunity Remedial Design Unit (RDU), RDU 7, which is within the Anaconda Regional Water, Waste, and Soils Operable Unit (ARWWS OU) of the Anaconda Smelter Superfund Site. This Order is issued to Respondent by the United States Environmental Protection Agency (EPA) under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,923, and was further delegated to EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-B. This authority has been further delegated to the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation.

II. FINDINGS OF FACT

2. The Respondent, the Atlantic Richfield Company (ARCO), is a corporation doing business in the State of Montana. It is currently organized under the laws of the State of Delaware. Respondent is an affiliate of BP Corporation North America, Inc.

a. The Respondent is now, and has been since on or about 1977, the owner and/or operator of the "facility," as defined below.

b. As a result of one or more mergers, restructurings, transfers of assets, continuations of business activities, or other corporate action, the Respondent is the successor-in-interest to, and has assumed the liabilities incurred by the Anaconda Copper Mining Company and/or its subsidiaries and related corporations or businesses, including historical predecessors.

3. The ARWWS OU encompasses approximately 300 square miles in southern Deer Lodge Valley and the surrounding foothills near Anaconda, Montana. It consists of agricultural, pasture, rangeland, forest, and riparian and wetland areas containing large volumes of hazardous substances resulting primarily from smelter and milling operations at the Upper and Lower Works, and the Washoe Reduction Works or New Works (also known as the Anaconda Reduction Works), by Respondent and predecessors-in-interest to Respondent from 1884 to 1980.

4. Pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Anaconda Smelter Superfund Site, including the ARWWS OU, RDU 7 (North Opportunity), and the West Galen Expansion Area, on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

5. From about September 1994 to about July 1996, ARCO, with EPA oversight, undertook a Remedial Investigation and Feasibility Study (RI/FS) for the ARWWS OU, pursuant to CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (NCP).

6. From about July 1996 to September 1998, EPA completed the RI/FS pursuant to CERCLA and the NCP.

7. In accordance with section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on October 22, 1997 and provided an opportunity for public comment on the proposed remedial action.

8. EPA's remedial action decision for the ARWWS OU is embodied in a Record of Decision (ROD), executed on September 29, 1998 with concurrence by the Montana Department of Environmental Quality (MDEQ), Exhibit 1. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

9. EPA has divided the Site into operable units (OUs), including the ARWWS OU, for response. EPA has further divided the ARWWS OU into remedial design units (RDUs). This Order addresses West Galen Expansion Area 2, which is within the North Opportunity RDU, RDU 7.

10. The West Galen Expansion Area is situated just north of Anaconda on both sides of Galen Road and is bordered by the Lost Creek RDU, RDU 2, to the west. It is bordered by the remaining portion of the North Opportunity RDU, RDU 7, to the south. Expansion Area 2 consists of properties owned by Respondent or the Ueland Ranch Company totaling 3967 acres. Expansion Area 1, which is not the subject of this action, is owned by the State of Montana, the United States Government, or other private owners. Properties comprising Expansion Area 2 are found throughout the West Galen Expansion Area, and are not necessarily contiguous. Soils in the West Galen Expansion Areas were impacted by smelter fallout from the Washoe and the Upper and Lower Works Smelters. The Smelters began operations in approximately 1884 and continued until September 1980.

11. Studies performed under the RI/FS for the ARWWS OU, which includes the West Galen Expansion Area, have documented the presence, release, and threat of release of arsenic, cadmium, lead, zinc, and copper at the West Galen Expansion Area.

12. Humans and wildlife are at risk from exposure to the waste materials in the West Galen Expansion Area. In particular, current and future recreational users of the West Galen Expansion Area may be exposed to waste materials and dust containing arsenic, cadmium, copper, lead and zinc via the inhalation and ingestion pathways. Terrestrial organisms and plant communities may also suffer adverse effects from exposure to these waste materials. Run-off

from copper and zinc in the West Galen Expansion Area may cause damage to the recreational fisheries of streams in the area. The West Galen Expansion Area is also a source of releases or threat of releases of hazardous substances or pollutants or contaminants into groundwater beneath and surrounding the area. Additional information on the human health and environmental risks at the ARWWS OU, which includes the West Galen Expansion Area, is presented in the Baseline Human Health Risk Assessment and the Baseline Ecological Risk Assessment for the ARWWS OU.

13. From about July 2000 to January 2005, ARCO, with EPA oversight, completed the Remedial Action Work Plans (RAWPs) for Expansion Areas 1 and 2, and the Final Design Report (FDR) (note: there are separate RAWPs for the two expansion areas, but the FDR applies to both expansion areas; the two RAWPs and the one FDR comprise Exhibit 2, and are attached hereto as a compact disk), Exhibit 2, for the entire West Galen Expansion Area, pursuant to Administrative Order on Consent, Docket No. CERCLA-VIII-88-16, Amendment 13.

14. EPA's remedial design and remedial action decision for Expansion Areas 1 and 2 is embodied in the January 2005 RAWP for West Galen Expansion Areas 1 and 2, and the 2005 FDR for both Expansion Areas, Exhibit 2, approved June 15, 2005, Exhibit 3.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the preceding Findings of Fact and the administrative record for the Site, EPA has made the following conclusions of law and determinations:

a. The Site, the ARWWS OU, the North Opportunity RDU, and the West Galen Expansion Area are "facilities" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

b. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

c. Respondent is a liable party under sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607, and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a);

d. Substances found at the Site, the ARWWS OU, and the West Galen Expansion Area are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14);

e. The presence of hazardous substances at the Site, including the ARWWS OU and the West Galen Expansion Area, and the past, present, or potential future migration of hazardous substances described in Section II of this Order constitute

an actual or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(21);

f. The actual or threatened release of one or more hazardous substances from the facilities may present an imminent and substantial endangerment to public health or welfare or the environment; and

g. The actions required by this Order are necessary to protect the public health and welfare and the environment.

IV. NOTICE TO THE STATE

16. EPA has notified the State of Montana (State), through the Montana Department of Environmental Quality (MDEQ), of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and provided for State involvement in the initiation, development, and selection of the remedial action, and will continue to provide for State involvement in design and implementation of the remedy, in accordance with section 121(f) of CERCLA, 42 U.S.C. § 9621(f). All EPA decisions under this Order will be made in consultation with MDEQ. EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by this Order.

V. ORDER

17. Respondent is hereby ordered to comply with all requirements of this Order, including but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VI. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

"**Contractor**" means any person, including the contractors, subcontractors, consultants, or agents retained or hired by Respondent to undertake any Work under this Order.

"**Day**" means calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day. Time will be computed in accordance with Rule 6 of the Federal Rules of Civil Procedure, unless otherwise specified.

"**Deliverable**" means any written product, including but not limited to, plans, reports, memoranda, data, and other documents that Respondent must submit to EPA under this Order.

"**NCP**" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including any amendments thereto.

"**Operation and Maintenance**" or "O&M" means all activities required under the Operation and Maintenance Plan presently being developed by Respondent as required under Administrative Order on Consent, Docket No. CERCLA-VIII-88-16, Amendment 13. Upon approval by EPA, the portions of that Operations and Maintenance Plan applicable to the West Galen Expansion Area are incorporated by reference and become enforceable as part of this Order.

"**Order**" means this Order, the exhibits attached to this Order, the EPA-approved work plan, and all documents incorporated into this Order by reference or according to the procedures set forth herein.

"**Performance Standards**" means those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ARWWS OU ROD, Exhibit 1, and/or the 2005 West Galen Expansion Area RAWPs (Areas 1 and 2) and FDR, Exhibit 2, that the remedial action and other Work performed under this Order must attain and maintain.

"**Record of Decision**" or "**ROD**" means the EPA Record of Decision for the ARWWS OU of the Anaconda Smelter Superfund Site, executed on September 29, 1998, and all attachments thereto, attached hereto as Exhibit 1, and incorporated herein by reference.

"**Remedial Action**" or "**RA**" means those activities, except for operation and maintenance, to be undertaken by Respondent to implement the final plans and specifications embodied in the 2005 West Galen Expansion Area 2 RAWP and FDR, Exhibit 2, including any additional activities required under Sections X, XI, XII, XIII, and XIV of this Order.

"**Remedial Design**" or "**RD**" means the 2005 West Galen Expansion Area 2 RAWP and FDR, Exhibit 2, and incorporated herein by reference.

"**Site**" means RDU 7, North Opportunity, including West Galen Expansion Area 2, as described in the ROD, Exhibit 1,and the 2005 West Galen Expansion Area 2 RAWP and FDR, Exhibit 2. The West Galen Expansion Area is located just north of Anaconda on both sides of Galen Road and is bordered by the Lost Creek RDU, RDU 2, to the west. It is bordered by the remaining portion of the North Opportunity RDU, RDU7, to the south.

"**Work**" means all activities Respondent is required to perform under this Order, including remedial action, operation and maintenance, and any other activities necessary to fulfill the requirements of this Order.

VII. NOTICE OF INTENT TO COMPLY

19. ARCO shall provide, not later than 7 days after the effective date of this Order, written notice to the EPA Remedial Project Manager stating whether it will unconditionally and unequivocally comply with this Order. If Respondent does not unconditionally and unequivocally commit to perform the Work as provided by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, based on facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions.

VIII. PARTIES BOUND

20. This Order shall apply to and be binding upon Respondent and its directors, officers, employees, agents, successors, and assigns, and upon Respondent's implementing agent, Atlantic Richfield Company, a wholly owned subsidiary of British Petroleum Amoco. No change in the ownership, corporate status, or other control of Respondent, nor any transfer of assets or real or personal property by the Respondent, shall alter any of the Respondent's responsibilities under this Order.

21. During the period in which this Order is in effect, Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock is transferred to the prospective owner or successor. Respondent shall provide a copy of this Order to each contractor and laboratory retained to perform any Work under this Order, within 5 days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing Respondent with respect to the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with this Order. Each contractor retained to perform Work shall be deemed to be related by contract to Respondent within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors comply with this Order, and perform any Work in accordance with this Order.

22. Within 7 days after the effective date of this Order Respondent shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure, if possible, that the recording of this Order is indexed to the titles of each and every property at the Site so as to provide notice to third parties

of the issuance and terms of this Order with respect to those properties. Respondent shall, within 14 days after the effective date of this Order, send notice of such recording and indexing to EPA.

23. Not later than 30 days prior to any transfer of any real property interest in any property included within the Site, Respondent shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name and principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

24. Respondent shall prepare, implement, perform, and complete all actions required by this Order, including all actions required under approved plans, in accordance with the standards, criteria, specifications, requirements, and schedule set forth herein and in the 2005 West Galen Expansion Area 2 RAWP and the West Galen Expansion Area FDR, Exhibit 2. All Work under this Order is subject to oversight by and the prior approval of EPA. Undertaking any on-Site physical activity without prior approval of EPA is a violation of this Order.

25. All Work shall be conducted and completed in accordance with CERCLA, the NCP, pertinent EPA guidance, and any amendments thereto which become effective prior to the date of completion of Work under this Order. Respondent shall be responsible for identifying and using other guidelines, policies, procedures, and information that may be appropriate for performing Work.

26. All Work shall be consistent with the ROD and the Performance Standards set forth in the ROD and the 2005 West Galen Expansion Area 2 RAWP and FDR, Exhibit 2, including all applicable or relevant and appropriate requirements. Notwithstanding any action by EPA, Respondent remains fully responsible for achievement of the Performance Standards. Nothing in this Order, nor in EPA's approval of any document prepared by EPA under this Order, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the RA action will achieve Performance Standards. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional Work to achieve Performance Standards.

27. Respondent shall employ sound scientific, engineering, and construction practices in performing Work under this Order. All tasks shall be under the direction and supervision of qualified personnel with experience in the types of tasks required for implementation of the Work.

28. All Work shall be under the direction and supervision of a qualified project manager. Within 10 days after the effective date of this Order, Respondent shall notify EPA in writing of the name, address, telephone number, and qualifications of the project manager and the identity and qualifications of the primary support entities, staff, and contractors proposed to be used in carrying out Work under this Order. If at any time Respondent proposes to use a different project

manager, support entities, staff, or contractors, Respondent shall notify EPA and provide similar information at least 14 days before such persons perform any Work under this Order.

29. EPA will review Respondent's selection of and changes in project manager, support entities, staff, or contractors according to the terms of this Section and Section XIV of this Order. If EPA disapproves of the selection of a project manager, support entities, staff, or contractors, Respondent shall submit to EPA within 14 days after receipt of EPA's disapproval, a list of project managers, support entities, staff, or contractors that would be acceptable to Respondent. EPA will thereafter provide written notice to Respondent of the names that are acceptable to EPA. Respondent may then select any approved name or names from that list and shall notify EPA of its selection(s) within 14 days of receipt of EPA's written notice.

30. Respondent shall, no later than 10 days prior to any off-Site shipment of hazardous substances from the Site to an out-of-State waste management facility, provide written notification of such shipment of hazardous substances to the appropriate state environmental official in the receiving state, to EPA, and to MDEQ. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed 10 cubic yards.

a. The notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which hazardous substances are to be shipped; (2) the type and quantity of hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method and route of transportation. Respondent shall notify EPA, MDEQ, and the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.

b. The identity of the receiving facility will be determined by Respondent at the earliest possible time. Respondent shall provide all relevant information, including the information noted above, as soon as practicable after a decision is reached, but in no event later than the time specified in this Paragraph.

31. Respondent shall cooperate with EPA in providing information regarding the Work to the public. If requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

X. FAILURE TO ATTAIN PERFORMANCE STANDARDS

32. In the event that EPA determines that response activities in addition to those set forth in the 2005 West Galen Expansion Area 2 RAWP and FDR, Exhibit 2, are necessary to attain

Performance Standards or accomplish the selected remedy for the West Galen Expansion Area 2, EPA may notify Respondent that additional response actions are necessary.

33. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional response activities are necessary to meet Performance Standards, Respondent shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of Sections IX, XVI, and XVII of this Order. Upon EPA's approval of the plan pursuant to Section XIV, Respondent shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

XI. EPA PERIODIC REVIEW

34. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the RA to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondent shall conduct the studies, investigations, or other response actions determined necessary by EPA for EPA to conduct its review. As a result of any review performed under this Paragraph, Respondent may be required to perform additional Work or to modify Work previously performed.

XII. ADDITIONAL RESPONSE ACTIONS

35. EPA may determine that work, in addition to that identified in this Order, may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondent to submit a work plan for additional response activities. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved deliverable.

36. Not later than 30 days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondent shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondent shall implement the work plan according to the standards, specifications, and schedule in this Order and the approved work plan. Respondent shall notify EPA of its intent to perform such additional response activities within 7 days after receipt of EPA's request for additional response activities.

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

37. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA and MDEQ. If neither the EPA Remedial Project Manager nor the Alternate Project

Manager are available, Respondent shall notify the EPA Emergency Response Branch, EPA Region VIII. Respondent shall take such action in consultation with the EPA Remedial Project Manager and in accordance with all applicable provisions of law and of this Order. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes action instead, Respondent shall reimburse the United States for all costs of the response action not inconsistent with the NCP. Respondent shall pay the response costs in the manner described in Section XXII of this Order.

38. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order any action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XIV. EPA REVIEW OF DELIVERABLES

39. After review of any deliverable which must be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission, (b) approve the submission with its own modifications, (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments, or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or similar term means the action described in phrases (a) or (b) of this Paragraph.

40. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the deliverable, as approved or modified by EPA.

41. Upon receipt of a notice of disapproval or a request for a modification, Respondent shall, within 7 days or such time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the deliverable for approval. Notwithstanding the notice of disapproval, or approval with modification, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the deliverable.

42. Any failure of Respondent to obtain full approval of a deliverable when required is a violation of this Order.

XV. REPORTING REQUIREMENTS

43. Respondent shall submit to EPA and MDEQ monthly progress reports containing, at a minimum, the following information:

a. A description of actions taken to comply with this Order, including plans and actions completed, during the previous month;

b. A description of problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate any problems or delays;

c. Any change orders, nonconformance reports, claims made, and actions taken to rectify problems;

d. Work planned for the next month with schedules relating such Work to the overall project schedule for RA completion, and

e. Except for information previously submitted, copies of inspection logs and results of all sampling, tests, and other data (including validated analytical data with supporting documentation on Contract Laboratory Program Form I's or in a similar format) received or produced by Respondent during the course of Work during the previous month.

These reports shall be submitted on or before the 10th day of each month from the effective date of the Order and each month thereafter until EPA determines that reports are no longer required.

44. During construction, Respondent shall record information each day on construction activities discussing, at a minimum, the daily activities, field adjustments, change orders, summaries of problems and actions to rectify problems, and such information as is customary in the industry. Information recorded on a given day shall be available to EPA for inspection the following day. The daily records shall be compiled and delivered to EPA and the State monthly with the progress reports required under the preceding Paragraph.

45. Respondent shall prepare and submit to EPA and MDEQ O&M reports that include, at a minimum, the following elements:

a. A description of O&M activities performed during the reporting period;

b. A description of the performance of each component of the remedial action requiring O&M, including a summary of any monitoring data demonstrating the performance of the remedy and its effectiveness in meeting Performance Standards;

c. A description and summary of the results of all monitoring performed in connection with the remedy;

d. A statistical evaluation of the monitoring data and a conclusion as to whether the results exceed appropriate criteria, and whether any exceedances necessitate the implementation of contingency measures;

e. Identification of any problems or potential problems and a description of all steps taken or to be taken to rectify the problems;

f. An appendix containing all validated data and supporting documentation on Contract Laboratory Program Form I's or in a similar format collected during the reporting period and not previously submitted; and

g. Copies of any O&M training materials and a record of employee attendance at training sessions.

O&M reports shall be submitted annually on or before the 10th day of January, commencing January 2003, or upon approval of the O&M Plan as provided under Amendment 13 to Administrative Order on Consent Docket No. CERCLA-VIII-88-16, whichever is later, and continuing until EPA notifies Respondent that the frequency of reporting may be reduced.

XVI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

46. Respondent shall ensure that Work performed, samples taken, and analyses conducted conform to the requirements of this Order and the EPA-approved sampling and analysis plan. Respondent will ensure that its field personnel are properly trained in the use of field equipment and chain-of-custody procedures.

47. To provide quality assurance and maintain quality control, Respondent shall use applicable portions of the approved quality assurance, quality control, and chain of custody procedures for all samples in accordance with the Clark Fork River Superfund Site Investigations Quality Assurance Project Plan (CFRSSI QAPP) and any amendments made thereto during the course of the implementation of this Order. Respondent shall ensure that EPA and MDEQ personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA and MDEQ pursuant to the QAPP for quality assurance monitoring. Respondent shall ensure that the laboratories it uses for the analysis of samples taken pursuant to the Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the CFRSSI Laboratory Analytical Protocol, and any amendments made thereto during the course of the implementation of this Order. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order will be conducted in accordance with the procedures set forth in the QAPP.

48. Upon request, Respondent shall allow split or duplicate samples to be taken by EPA and MDEQ or their authorized representatives. Respondent shall give EPA and MDEQ reasonable notice of any sample collection activity. In addition, EPA and MDEQ shall have the

right to take any additional samples that EPA or MDEQ deem necessary. Upon request, EPA and MDEQ shall allow Respondent to take split or duplicate samples of any samples they take as part of EPA's oversight of Respondent's implementation of the RA.

49. Respondent shall submit to EPA and MDEQ copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the RA and/or the implementation of this Order pursuant to the schedule set forth in the 2005 West Galen Expansion Area 2 RAWP and FDR, Exhibit 2.

50. Notwithstanding any provision of this Order, EPA and MDEQ retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, CECRA, and any other applicable federal and State statutes or regulations

XVII. COMPLIANCE WITH APPLICABLE LAWS

51. All Work shall be performed in accordance with the requirements of all federal and State laws and regulations. Except as provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or State permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

52. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

53. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); with off-site policy regulations at 40 C.F.R. 300.440; and with all other applicable federal, State, and local requirements.

XVIII. REMEDIAL PROJECT MANAGER

54. The EPA Remedial Project Manager is:

Charles Coleman, 8MO
EPA Region VIII, Montana Office
10 West 15th Street
Suite 3200
Helena, MT 59624
(406) 457-5038

The Alternate Remedial Project Manager is:

John Wardell, 8MO
EPA Region VIII Montana Office
10 West 15th Street
Suite 3200
Helena, MT 59624
(406) 457-5001

EPA's lead attorney is:

Andrew J. Lensink
Sr. Enforcement Attorney
EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202
(303) 312-6908

MDEQ's Project Manager is:

William Botsford
Montana Department of Environmental Quality
Remediation Division
P.O. Box 200901
Helena, MT 59620
(406) 444-0477

EPA may change its Remedial Project Manager or Alternate Project Manager at any time and will inform Respondent of such changes.

55. The EPA Remedial Project Manager and Alternate Project Manager shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator by the NCP. The EPA Remedial Project Manager and Alternate Project Manager shall have authority, consistent with the NCP, to halt any Work required by this Order, and to take any necessary response action.

56. All communications, whether written or oral, from Respondent to EPA shall be directed from Respondent's project manager to the EPA Remedial Project Manager or Alternate Project Manager. Respondent shall submit to EPA five copies and to MDEQ one copy of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall hand-deliver or send these documents by certified mail, return receipt requested, or overnight mail.

XIX. ACCESS AND DATA/DOCUMENT AVAILABILITY

57. Respondent shall allow EPA, MDEQ and their authorized representatives to enter and move freely about any and all property owned or controlled by Respondent at the Site and off-Site areas subject to or affected by the Work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its representatives or contractors pursuant to this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting such tests as EPA, MDEQ, or their authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA and MDEQ by Respondent. Respondent shall allow EPA, MDEQ and their authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.

58. If the Site, any off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the RA, is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, Site access agreements from the present owner(s) within 30 days of the effective date of this Order.

a. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner.

b. Access agreements shall provide access for EPA, MDEQ and their authorized representatives, and Respondent and its contractors and shall specify that Respondent is not EPA's or MDEQ's representative with respect to the Site or Site activities.

c. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access.

59. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform response actions with EPA contractors, or may terminate the Order if Respondent cannot obtain access agreements. Respondent shall reimburse EPA for all response costs (including attorney fees) incurred by the United States to obtain access for Respondent. If EPA performs tasks or activities with contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such activities.

Respondent shall integrate the results of any such tasks undertaken by EPA into the Work it performs under this Order.

60. Respondent shall provide to EPA and MDEQ upon request, copies of all documents and information within its possession and/or control or that of its contractors relating to activities at the Site or to the implementation of this Order, including but not limited to, sampling, analysis, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and MDEQ for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

61. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.

XX. RECORD PRESERVATION

62. For a period of 10 years after Work is completed under this order, Respondent shall preserve and retain all records and documents in its possession or control and in the possession or control of its contractors, on and after the date of signature of this Order, that relate in any manner to the Site, Respondent's potential liability under CERCLA, or performance of Work under this Order. At the conclusion of this document-retention period, Respondent shall notify the United States at least 90 days prior to the destruction of any such records or documents, and upon request by the United States, Respondent shall deliver any such records or documents to EPA at no cost to EPA.

XXI. ASSURANCE OF ABILITY TO COMPLETE WORK

63. Respondent shall establish and maintain financial assurance sufficient to complete all Work covered under this Order. At a minimum, Respondent shall demonstrate financial assurance in an amount no less than the estimate of the cost for the RA for West Galen Expansion Area 2.

a. Within thirty (30) days after the effective date of this Order, Respondent shall submit for EPA approval a draft instrument for financial assurance using the options and documentation specified in 40 C.F.R. § 264 Subpart H, substituting the terms "remediation" and/or "Work" for "closure" or "post-closure," and

referencing this Order, as appropriate in documents prepared therefor. Within thirty (30) days of EPA approval, Respondent shall establish and maintain the financial assurance instrument approved by EPA consistent with 40 C.F.R. § 264.143. Such financial assurance must be sufficient to fund the performance of all Work, including all Operation and Maintenance requirements specified in the Work Plan. The amount of financial assurance established and maintained shall be amount to be approved by EPA.

b. Each financial instrument obtained pursuant to this Section must be established and used solely for the purpose of conducting the remediation activities required by this Order at and for this Facility. Each financial assurance instrument established and maintained by Respondent in accordance with this Section must allow the funds provided in the financial assurance to be available in the event that Respondent proves unable or unwilling to undertake any actions prescribed in this Order while it is in effect so that the activities covered by the instrument may be completed by Respondent upon EPA approval or by EPA.

c. Respondent shall review the financial assurance mechanism annually to determine whether it is funded sufficiently to cover performance of the remaining Work and other obligations under this Order. If at any time the net worth secured in the financial instrument is insufficient to perform the remaining Work and other obligations under this Order, Respondent shall provide written notice to EPA within thirty (30) days after the amount of financial instrument becomes insufficient. The written notice shall describe what actions have been or will be taken to fund the instrument adequately.

d. In the event that EPA determines at any time that the financial assurance pursuant to this Section is inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for EPA's approval one of the other forms of financial assurance authorized in 40 C.F.R. § 264.145.

e. If Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 63a above after entry of this Order, Respondent may, on any anniversary date of entry of this Order, or at any other time agreed to by the Parties, request the amount of the financial assurance provided under this Section be reduced to the estimated cost of the remaining work to be performed. Respondent shall submit a proposal for such reduction to EPA in accordance with the requirements of this Section. Upon approval, EPA will initiate steps to reduce the amount of assurance secured in the financial document.

f. Respondent shall submit all financial assurance documents pursuant to this Section to EPA Region VIII for review:

Daniela Golden, 8ENF-RC
EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6772

g. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any Work required under this Order.

64. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA, within 30 days from the effective date of this Order, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimate of the cost for the RA for West Galen Expansion Area 2. If Respondent seeks to demonstrate ability to complete the remedial action by means of internal financial information, or by guarantee of a third party, it shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within 30 days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

65. At least 7 days prior to commencing any physical on-Site activity at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXII. UNITED STATES NOT LIABLE

66. The United States, by issuance of this Order, and the State assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. EPA, MDEQ, the United States, and the State may not be deemed to be parties to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

67. Respondent shall save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States, including but not limited to, attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondent as EPA's authorized representative(s) under section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

XXIII. ENFORCEMENT AND RESERVATIONS

68. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to the Site and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support the oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

69. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

70. Nothing in this Order shall preclude EPA or MDEQ from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

71. Notwithstanding any provision of this Order, the United States and the State hereby retain all of their information gathering, inspection, and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

72. Respondent shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than $32,500 for each day in which Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to provide response action properly under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

73. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

74. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXIV. EFFECTIVE DATE AND COMPUTATION OF TIME

75. This Order shall be effective 14 days after signing. All times for performance of ordered activities shall be calculated from this effective date.

XXV. OPPORTUNITY TO CONFER

76. Respondent may, within 7 days after the date this Order is signed, request a conference with EPA to discuss this Order. The conference shall be limited to discussion of issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative. Such conference shall not delay the performance of any Work.

77. Requests for a conference must be by telephone followed by written confirmation mailed that day to:

Henry Elsen
EPA Region VIII, Montana Office
Federal Office Building
10 W. 15th St.; Suite 3200
Helena, MT 59626
(406) 457-5030

IT IS SO ORDERED

BY: Judith Wong DATE: 8/5/05
for Max H. Dodson, Assistant Regional Administrator
Office of Ecosystems Protection and Remediation