1828354

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA	)	
and	)	
THE STATE OF SOUTH DAKOTA,	)	CASE NO. 5:16 cv 5022
Plaintiffs,	)	
v.	)	**CONSENT DECREE**
COCA MINES INC.	)	
and	)	
THOMAS E. CONGDON,	)	
Defendants.	)	

TABLE OF CONTENTS

I. BACKGROUND 1

II. JURISDICTION 3

III. PARTIES BOUND 3

IV. DEFINITIONS 3

V. STATEMENT OF PURPOSE 7

VI. PAYMENT OF RESPONSE COSTS 7

VII. FAILURE TO COMPLY WITH CONSENT DECREE 11

VIII. COVENANTS BY PLAINTIFFS 14

IX. RESERVATION OF RIGHTS BY PLAINTIFFS 15

X. COVENANTS BY SETTLING DEFENDANTS 16

XI. EFFECT OF SETTLEMENT/CONTRIBUTION 17

XII. RETENTION OF RECORDS AND CERTIFICATION 19

XIII. NOTICES AND SUBMISSIONS 21

XIV. RETENTION OF JURISDICTION 22

XV. INTEGRATION/APPENDICES 22

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 23

XVII. SIGNATORIES/SERVICE 23

XVIII. FINAL JUDGMENT 24

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of South Dakota ("State"), on behalf of the Secretary of the South Dakota Department of Environment and Natural Resources ("DENR"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and Chapter 34A-12 of South Dakota Codified Law ("SDCL"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Gilt Edge Mine Site in Lawrence County, South Dakota (the "Site").

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

C. In performing response action at the Site, EPA and the State have incurred response costs and will incur additional response costs in the future.

D. The United States and the State allege that CoCa Mines Inc. ("CoCa") and Thomas E. Congdon, the "Settling Defendants" (as defined below) are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Chapter 34A-12-12 of SDCL, and are jointly and severally liable for response costs incurred and to be incurred at the Site.

E. The United States has reviewed the Financial Information, including relevant insurance policies and documents, submitted by CoCa to determine whether the Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this

Financial Information, the United States has determined that CoCa has limited financial ability to pay for response costs incurred and to be incurred at the Site.

F. Thomas E. Congdon previously held the position of President and Chief Executive Officer of CoCa, was a shareholder of CoCa, and served as both general partner and limited partner of Congdon and Carey Ltd. No. 3 ("C&C 3"), a Colorado Limited Partnership. Thomas E. Congdon also served as both general partner and limited partner of Congdon and Carey Ltd. No. 5 ("C&C 5"), a Colorado Limited Partnership.

G. The Settling Defendants do not admit any liability to Plaintiffs, to each other, or any third party arising out of the transactions or occurrences that are alleged or could have been alleged in the complaint, or arising out of any conditions related to the Site, nor do they acknowledge that any release or threatened release of hazardous substances has occurred at or from the Site, or that any such claimed release or threatened release constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

H. The United States, the State, and Settling Defendants (collectively, the "Parties") agree that this Consent Decree shall not be admissible in any judicial or administrative proceeding, except in a proceeding to enforce this Consent Decree or in CoCa's litigation against Travelers, as evidence of Settling Defendants' liability for the Matters Addressed, as defined below.

I. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, 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 or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"CoCa Mines Inc." shall mean CoCa Mines Inc., a corporation organized under the laws of the State of Colorado.

"CoCa's Insurers" shall mean Northern Insurance Co. of New York, Maryland Casualty Company and its successor by merger, Zurich American Insurance Company, Commercial Union Insurance Company, and Employers Fire Insurance Company.

"Congdon" shall mean Thomas E. Congdon, a resident of the State of Colorado, individually and in all capacities, including but not limited to, as former President and Chief Executive Officer of CoCa, shareholder of CoCa, and general partner and limited partner of C&C 3, and general partner and limited partner of C&C 5.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Day" or "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 or state holiday, the period shall run until the close of business of the next working day.

"DENR" shall mean the South Dakota Department of Environment and Natural Resources.

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

"Effective Date" shall mean the date upon which the Court's approval of this Consent Decree is recorded on the Court's docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

"Financial Information" shall mean the financial information submitted to the EPA by CoCa and Hecla Limited (f/k/a Hecla Mining Company)("Hecla") pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e) or as otherwise requested by DOJ, in response to requests for information, dated August 14, 2008, August 17, 2009, December 9, 2009, September 21, 2010, April 8, 2011, February 7, 2013, and March 31, 2014, including but not limited to, insurance information.

"Gilt Edge Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3) to fund future response actions at or in connection with the Site.

"Insurance Policy" shall mean the CGL liability insurance policy number CF257G347-8, with a policy period of July 30, 1984 to July 30, 1985, issued by Constitution State Insurance Company to CoCa.

"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. Rates are available online at http://www2.epa.gov/superfund/superfund-interest-rates.

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

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

"Parties" shall mean the United States, the State, and Settling Defendants.

"Plaintiffs" shall mean the United States and the State.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

"SDCL" shall mean South Dakota Codified Law.

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

"Settling Defendants" shall mean CoCa Mines Inc. and Thomas E. Congdon.

"Settling Defendants' Related Parties" shall mean: (i) Settling Defendants' successors and assigns, and estates, but only to the extent that the liability of such person or entity is based on the liability of Settling Defendants; (ii) Settling Defendants' former or current officers, directors and employees, but only to the extent that the liability of such person is based on acts and/or omissions which occurred in the scope of the person's employment or capacity as an officer, director, and employee; (iii) Hecla in the following alleged capacities: as the corporate parent of CoCa, as an alleged debtor to CoCa, as an alleged successor to relevant liabilities of CoCa or as an assignee of relevant ownership interests of CoCa, including without limitation any assumption of liabilities, whether direct or indirect, express or implied, arising from the ownership interests, activities or involvement of CoCa at or with respect to the Site; (iv) the former or current officers, directors and employees of Hecla, but only to the extent that the liability of such person is based on the person's employment or capacity as an officer, director, and employee of Hecla; (v) C&C 3 and C&C 5.

"Site" shall mean the Gilt Edge Mine Superfund Site, located 4.5 miles southeast of the town of Lead in the northern Black Hills in Lawrence County, South Dakota, and as generally depicted on the map attached hereto as Appendix A. The "Site" also includes off-site areas impacted by hazardous substances released from the Site.

"State" shall mean the State of South Dakota and each of its departments, agencies and instrumentalities, including DENR, but does not include a political subdivision of the State or any agency or instrumentality of that political subdivision.

"Travelers" shall mean Travelers Indemnity Company, a member of the Travelers group of companies, which has advised CoCa that it has assumed the assets and liabilities of Constitution State Insurance Company, including the Insurance Policy No. CF257G347-8 issued by Constitution State Insurance Company for the period of July 30, 1984 to July 30, 1985.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment to resolve their alleged civil liability with regard to the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as provided in the Covenants by Plaintiffs in Section VIII, subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Cash Payment by Settling Defendants for Response Costs. Settling Defendants shall pay to EPA and the State the aggregate cash amount of ten million three hundred thousand

dollars ($10,300,000). The payment shall be made within 60 days after the Effective Date and, if timely paid, shall include no Interest.

6. Of the cash amount to be paid by Settling Defendants pursuant to Paragraph 5 (Cash Payment by Settling Defendants for Response Costs), the sum of nine million two hundred seventy thousand dollars ($9,270,000) shall be paid to EPA and deposited into the Gilt Edge Special Account, to be retained and used by EPA to fund future response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Of the cash amount to be paid by Settling Defendants pursuant to Paragraph 5 (Cash Payment by Settling Defendants for Response Costs), the sum of one million thirty thousand dollars ($1,030,000) shall be paid to the State.

7. Insurance Claims and Recovered Amounts for Response Costs.

a. CoCa has made a claim pursuant to the Insurance Policy, against Travelers for defense and indemnity for the claims asserted by the United States and the State against CoCa, which claims are resolved in this Consent Decree. Travelers has failed and refused to satisfy its defense and indemnity obligations to CoCa under the Insurance Policy. To the extent litigation is necessary, CoCa shall file a lawsuit against Travelers seeking to recover on Travelers' indemnity obligation under the Insurance Policy to CoCa for the payment of response costs. CoCa shall exercise good faith in the prosecution of and in any settlement of the lawsuit against Travelers. CoCa shall be responsible for the conduct of the litigation, including the costs and attorneys' fees incurred therewith. CoCa's exercise of "good faith" under this paragraph shall mean that: (i) CoCa will file and serve a lawsuit on Travelers and will diligently prosecute that lawsuit with counsel experienced in insurance coverage litigation and that CoCa is entitled to rely on the advice and counsel as to the most effective and efficient means of prosecuting the

insurance coverage action, including advice on settlement, discovery and trial strategy in and pursuing claims for coverage under the Insurance Policy; and (ii) CoCa shall have the right to negotiate and litigate to obtain a reasonable resolution of the lawsuit given the entirety of the facts and circumstances, coverage issues and defenses, availability of witnesses and other strategic decisions in the judgment of coverage counsel and CoCa. CoCa shall report quarterly in writing on the status of the negotiations or litigation to the DOJ and EPA per Section XIII (Notices and Submissions). CoCa shall advise DOJ and EPA of all settlement offers and counteroffers and the status of any proposed settlement in its quarterly reports. Payment of recovered amounts from the Insurance Policy shall be made as follows:

i. CoCa shall pay one hundred percent (100%) of the first $400,000 in indemnity payments recovered under the Insurance Policy to the Plaintiffs as follows: ninety percent (90%) of such recovery shall be paid to EPA and ten percent (10%) of such recovery shall be paid to the State in accordance with the instructions provided in Paragraph 8 (Payment Instructions for Response Costs by Settling Defendants).

ii. CoCa shall pay fifty percent (50%) of amounts recovered in indemnity payments under the Insurance Policy after the first $400,000 (pursuant to subsection i., above) under the Insurance Policy, up to an aggregate total of $700,000, to the Plaintiffs as follows: ninety percent (90%) of such recovery shall be paid to EPA and ten percent (10%) of such recovery shall be paid to the State in accordance with the instructions provided in Paragraph 8 (Payment Instructions for Response Costs by Settling Defendants). The remaining 50% shall be retained by CoCa.

iii. CoCa shall be entitled to recover and retain its costs of litigation, including attorneys' fees and costs incurred, as well as any monies paid by Travelers for breach of its duty to defend CoCa.

b. The United States and the State agree that they are not third-party beneficiaries to the Insurance Policy or any insurance policy issued by CoCa's Insurers, and agree not to assert any claims relating to the Site based on the Insurance Policy or any insurance policy issued by CoCa's Insurers.

c. CoCa is solely responsible for the obligations under Paragraph 7 (Insurance Claims and Recovered Amounts for Response Costs), and Congdon shall not be held responsible or liable for any failure by CoCa to comply with any obligations under Paragraph 7 (Insurance Claims and Recovered Amounts for Response Costs), including for any interest, penalties, costs, or attorney fees that may be incurred or awarded as a result.

8. Payment Instructions for Response Costs by Settling Defendants. Payments due to EPA and required by Settling Defendants pursuant to Paragraph 5 (Cash Payment by Settling Defendants for Response Costs), and by CoCa pursuant to Paragraph 7 (Insurance Claims and Recovered Amounts for Response Costs), shall be made by Fedwire Electronic Funds Transfer ("EFT") to the DOJ in accordance with current EFT procedures, and in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") within 30 days of the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. Payment by Settling Defendants to the State shall be made in accordance with instructions provided to Settling

Defendants by the State within 30 days of the Effective Date. The FLU and the State shall provide the payment instructions on behalf of the Settling Defendants to:

Elizabeth H. Temkin, Partner
Temkin Hardt & Longenecker LLP
1900 Wazee Street, Suite 303
Denver, CO 80202

Thomas E. Congdon
1776 Lincoln Street
Suite 800
Denver, CO 80203

Howard Kenison, Partner
Patrick Compton, Partner
Lindquist & Vennum LLP
600 17th Street, Suite 1800-S
Denver, CO 80202

Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices and Submissions).

9. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA, DOJ, and the State in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 08-7T, and DOJ Case Number 90-11-3-11179.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Late Payments. If the Settling Defendants fail to make the payment required by Paragraph 5 (Cash Payment by Settling Defendants for Response Costs) by the

required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment. If CoCa fails to make any payment required by Section VI, Paragraph 7 (Insurance Claims and Recovered Amounts for Response Costs) by any required due date, Interest shall accrue on the unpaid balance from such due date through the date of the payment.

11. Stipulated Penalty.

a. If the amount due as required by Paragraph 5 (Cash Payment by Settling Defendants for Response Costs) is not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10 (Interest on Late Payments), five hundred dollars ($500) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days after the date of the demand for payment of the penalties by EPA or the State. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York

c. At the time of payment, Settling Defendant(s) shall send notice that payment has been made to DOJ, EPA and the State in accordance with Section XIII (Notices and

Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 08-7T, and DOJ Case Number 90-11-3-11179.

d. Penalties shall accrue as provided in this Section regardless of whether EPA or the State has notified Settling Defendants 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 after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of a Settling Defendant(s)' failure to comply with the requirements of this Consent Decree.

14. The obligations of Settling Defendants to pay amounts owed the United States and the State under Paragraph 5 (Cash Payment by Settling Defendants for Response Costs) and/or any stipulated penalty or Interest incurred as a result of Settling Defendants' failure to comply with Paragraph 5 (Cash Payment by Settling Defendants for Response Costs) are joint and several. In the event of the insolvency of a Settling Defendant or other failure by a Settling

Defendant to make such payments, the remaining Settling Defendant shall be responsible for such payments.

15. 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. Payment of stipulated penalties shall not excuse a Settling Defendant(s) from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS BY PLAINTIFFS

16. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the Plaintiffs covenant not to sue or to take administrative action against Settling Defendants relating to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); the United States covenants not to sue or take administrative action against Settling Defendants relating to the Site pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606; and the State covenants not to sue or take administrative action against Settling Defendants relating to the Site pursuant to Chapters 34A-10-1 or 34A-12-10 to -12 of SDCL. With respect to past, present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants also are conditioned upon the completeness of the Financial Information provided by CoCa. These covenants extend only to Settling Defendants and do not extend to any other person; provided,

however, that these covenants not to sue (and the reservations thereto) shall also apply to Settling Defendants' Related Parties.

IX. RESERVATION OF RIGHTS BY PLAINTIFFS

17. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Section VIII (Covenants by Plaintiffs). Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based on the ownership or operation of the Site by Settling Defendants when such ownership or operation commences after signature of this Consent Decree by Settling Defendants;

e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant not associated with the Site.

18. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstate or reopen this action, or to commence a new action against CoCa seeking relief other than as provided in this Consent Decree if CoCa withheld from disclosure material financial information responsive to the information requests listed in the definition of "Financial Information." The United States reserves, and this Consent Decree is without prejudice to, the right to commence a new action against Hecla seeking relief other than as provided in this Consent Decree if Hecla withheld from disclosure material financial information responsive to the information requests listed in the definition of "Financial Information."

X. COVENANTS BY SETTLING DEFENDANTS

19. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution; the South Dakota Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

20. Except as provided in Paragraph 26 (res judicata and other defenses), these covenants shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by Plaintiffs), other than in Paragraph 17.a (liability for failure to meet a requirement of the Consent Decree) or 17.b (criminal liability), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

22. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section X (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

23. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of

CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the State or any other person. However, if the United States or the State exercises rights under the reservations in Section IX (Reservations of Rights by Plaintiffs) other than in Paragraph 17.a (liability for failure to meet a requirement of the Consent Decree) or 17.b (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

24. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States and the State in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendants have, as of the Effective Date, resolved their liability to the United States and the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

25. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify DOJ, EPA, and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify DOJ, EPA, and the State in writing within ten (10) days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify DOJ, EPA, and the State within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10)

days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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

XII. RETENTION OF RECORDS AND CERTIFICATION

27. Until thirty (30) days after Settling Defendants have complied with their payment obligations under Section VI (Payment of Response Costs), each Settling Defendant shall preserve and retain all non-identical copies of records, reports, or other information including any that may be in electronic form (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to their liability under CERCLA with respect to the Site, or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

28. For a period of three (3) years after the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify DOJ, EPA, and the State at least ninety (90) days prior to the destruction of any such Records and, upon request by DOJ, EPA, or the State, and subject to any claim of confidentiality or privilege, Settling Defendants shall deliver any such Records to DOJ, EPA, or the State. Settling Defendants may assert that all or part of certain Records are confidential or privileged under the attorney-client privilege or any

other privilege or doctrine recognized by federal law, including business confidentiality pursuant to Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) and 40 C.F.R. § 2.203(b). If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the Record; and (vi) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

29. a. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has: (i) not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States; (ii) that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e); and

b. CoCa certifies that, to the best of its knowledge and belief, after thorough inquiry, it has submitted Financial Information that it believes fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted and the time that CoCa executes this Consent Decree.

XIII. 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. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eecasemanagement.enrd@usdoj.gov

As to DOJ by regular mail:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-11-3-11179

Heidi Hoffman
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202

As to EPA:

Amelia Piggott
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

As to the State:

Richard M. Williams
Deputy Attorney General
State of South Dakota

1302 East Highway 14, Suite 1
Pierre, SD 57501
(605) 773-3215

Mark Lawrensen
Senior Scientist
Department of Environment and Natural Resources
State of South Dakota
Joe Foss Bldg.
523 E. Capitol
Pierre, SD 57501

As to CoCa Mines Inc.:

CoCa Mines Inc.
c/o Hecla Limited
6500 N. Mineral Dr., Suite 200
Coeur d' Alene, ID 83815-940
Attention: Legal Dept.

Elizabeth H. Temkin, Partner
Temkin Hardt & Longenecker LLP
1900 Wazee Street, Suite 303
Denver, CO 80202

As to Thomas E. Congdon:

Thomas E. Congdon
1776 Lincoln Street, Suite 800
Denver, CO 80203

With a copy to:

Howard Kenison, Partner
Patrick Compton, Partner
Lindquist & Vennum, LLP
600 17th Street, Suite 1800-S
Denver, CO 80202

XIV. 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.

XV. INTEGRATION/APPENDICES

32. This Consent Decree and its appendix constitute 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. The following appendix is attached to and incorporated into this Consent Decree: Appendix A is the map of the Gilt Edge Mine Superfund Site.

XVI. 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. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent 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 Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

35. The undersigned representative of each Settling Defendant and each undersigned representative of the Plaintiffs certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Each Settling Defendant 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

37. The Settling Defendants shall each identify on their signature pages the name and address of one agent who is authorized to accept service of process by mail on behalf of Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants each agree 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. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

38. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 19th DAY OF September, 2016.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

Date:_____

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

Date: April 15, 2016

HEIDI HOFFMAN
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
(303) 844-1392

RANDOLPH J. SEILER
Acting United States Attorney
Dis ict of South Dakota

Date:_____

DIANA RYAN
Civil Chief, United States Attorney
District of South Dakota
515 Ninth Street, Suite 201
Rapid City, South Dakota 57701

FOR THE UNITED STATES OF AMERICA:

Date:_____

_____
JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

Date:_____

_____
HEIDI HOFFMAN
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
(303) 844-1392

RANDOLPH J. SEILER
United States Attorney
District of South Dakota

Date: 4-11-16

_____
DIANA RYAN
Civil Chief, Assistant United States Attorney
District of South Dakota
325 South First Avenue, Suite 300
Sioux Falls, SD 57104
(605) 357-2340

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 4/11/16

KELCEY LAND
Director, Technical Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Date: 4/11/16

ANDREA MADIGAN
Acting Director, Legal Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

FOR THE STATE OF SOUTH DAKOTA:

MARTY J. JACKLEY
Attorney General
State of South Dakota

Date:_____

RICHARD M. WILLIAMS
Deputy Attorney General
State of South Dakota
1302 E. Highway 14, Suite 1
Pierre, South Dakota 57501
(605) 773-3215

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date:_____

KELCEY LAND
Director, Technical Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Date:_____

ANDREA MADIGAN
Acting Director, Legal Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

FOR THE STATE OF SOUTH DAKOTA:

MARTY J. JACKLEY
Attorney General
State of South Dakota

Date: 4-13-16

RICHARD M. WILLIAMS
Deputy Attorney General
State of South Dakota
1302 E. Highway 14, Suite 1
Pierre, South Dakota 57501
(605) 773-3215

FOR SETTLING DEFENDANT COCA MINES INC.:

Date: 3/14/16

MICHAEL CLARY
Vice President
CoCa Mines Inc.
6500 N. Mineral Drive
Suite 200
Coeur d'Alene, ID 83815

FOR SETTLING DEFENDANT THOMAS E. CONGDON:

Date:

THOMAS E. CONGDON
1776 Lincoln Street
Suite 800
Denver, CO 80203

FOR SETTLING DEFENDANT COCA MINES INC.:

Date:_____

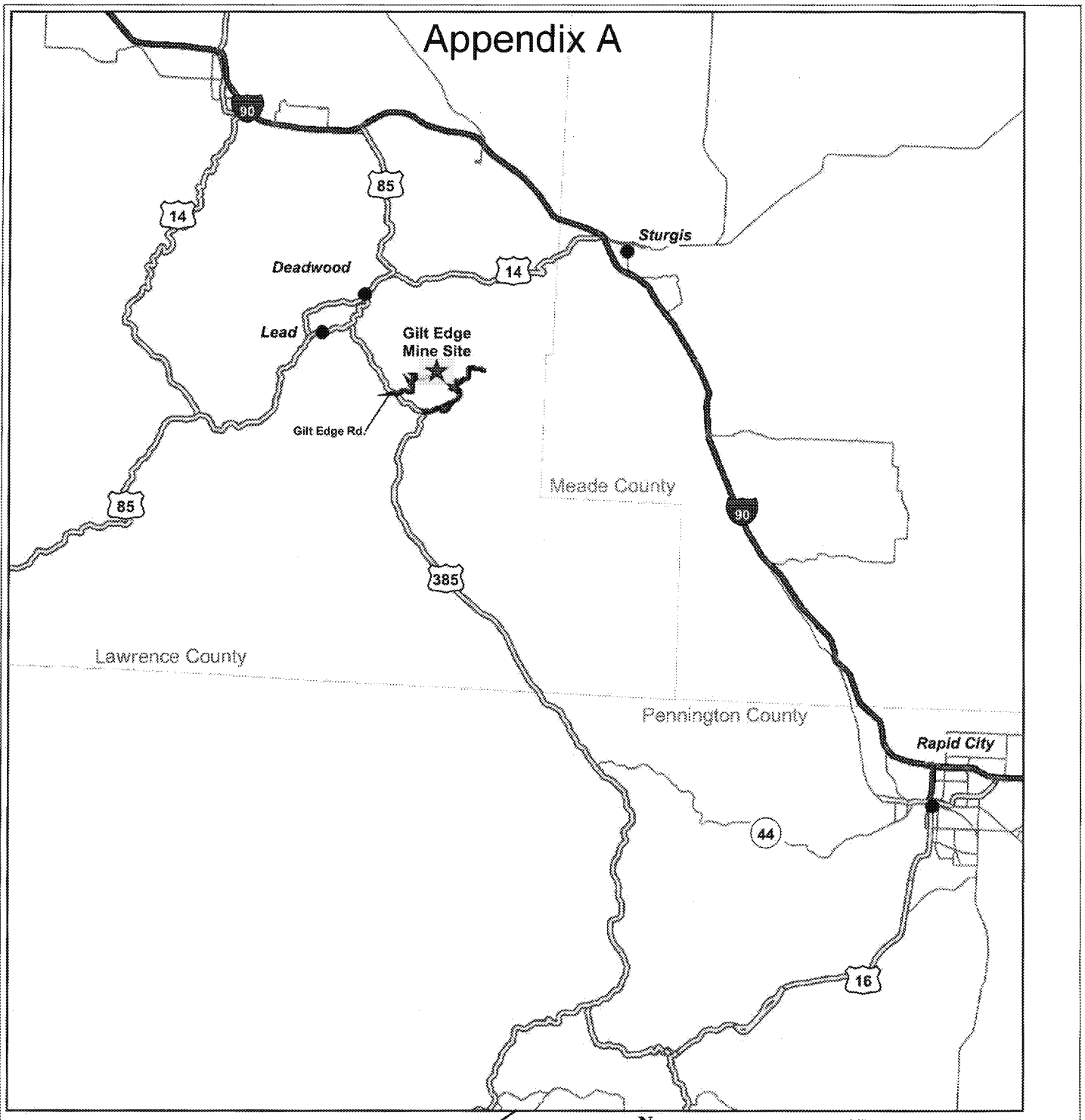
_____
MICHAEL CLARY
Vice President
CoCa Mines Inc.
6500 N. Mineral Drive
Suite 200
Coeur d'Alene, ID 83815

FOR SETTLING DEFENDANT THOMAS E. CONGDON:

Date: 3/15/16

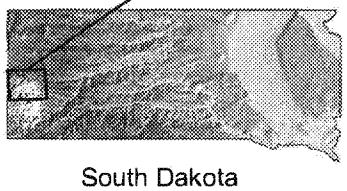
_____
THOMAS E. CONGDON
1776 Lincoln Street
Suite 800
Denver, CO 80203

Appendix A



Legend

- Town/City
- Limited Access Highway
- Highway
- Local Roads
- Improved Gravel
- Urban Areas (Regional)
- Counties



South Dakota

N
W E
S

Miles
5 2.5 0 5

CDM Smith

FIGURE 1

Site Location Map

GILT EDGE MINE SITE
LAWRENCE COUNTY, SOUTH DAKOTA

M:\3280-RAC8\048-GiltEdge\gis\RI_Rpt_079509\Figure1_SiteLocationMap.mxd