IN THE MATTER OF: Anaconda Copper Mine Yerington, Lyon County, Nevada Atlantic Richfield Company, SETTLING PARTY, Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	)	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT U.S. EPA Region IX CERCLA Docket No. _____

ED_001725A_00005650-00002

I. JURISDICTION

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Atlantic Richfield Company ("Settling Party"). This Settlement provides for modification of the Settling Party's response obligations pursuant to previous administrative orders and the payment of certain response costs incurred by the United States at or in connection with the Anaconda Copper Mine ("Site") located in Yerington, Lyon County, Nevada.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001), 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated by the Regional Administrator of EPA Region IX to the Branch Chief, Superfund Division (now Assistant Director) by Region IX Delegation Nos. R9 1290.13, R9 1290.15, and R9 1290.20.

3. EPA has notified the State of Nevada (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Settling Party recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Settling Party in accordance with this Settlement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations of this Settlement. Settling Party agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. BACKGROUND

5. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

7. EPA issued Unilateral Administrative Orders 9-2005-0011 and 9-2007-0005 (the "Unilateral Orders") to Settling Party requiring Settling Party to perform response actions at the Site.

8. EPA and Settling Party have entered into Administrative Orders on Consent 09-2008-0005 and 09-2009-0010 (the "Consent Orders") wherein, in addition to payment of certain

ED_001725A_00005650-00003

EPA past response costs, Settling Party agreed to perform further response actions at the Site.

9. In performing response actions, EPA and Settling Party have incurred response costs at or in connection with the Site.

10. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

11. EPA and Settling Party recognize that this Settlement has been negotiated in good faith and that this Settlement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the facts or allegations contained in this Section.

12. EPA intends to defer the Site to the Nevada Division of Environmental Protection (NDEP) pursuant to a Deferral Agreement between EPA and NDEP. The Deferral Agreement and this Settlement will be signed in conjunction with an Administrative Order on Consent between NDEP and Settling Party (NDEP AOC). The NDEP AOC requires implementation of the remedy selected in the July 2017 Interim Record of Decision for Operable Unit 8 as well as the completion of the Remedial Investigation and Feasibility Study (RI/FS) for the Site.

III. PARTIES BOUND

13. This Settlement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement. Each signatory to this Settlement certifies that he or she is authorized to enter into the terms and conditions of this Settlement and to bind legally the party represented by him or her.

IV. DEFINITIONS

14. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement 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.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, 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.

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

ED_001725A_00005650-00004

"Effective Date" shall mean the effective date of this Settlement as provided by Section XVII.

"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.

"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 https://www.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 Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Settling Party.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date, and including accrued Interest on all such costs through such date.

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

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

"Settlement" shall mean this this Administrative Settlement Agreement and Order on Consent and any attached appendices. In the event of conflict between this Settlement and any appendix, the Settlement shall control.

"Settling Party" shall mean Atlantic Richfield Company.

"Settling Party's Past Response Costs" shall mean all costs that Settling Party has paid at or in connection with the Site through the Effective Date, plus accrued interest on all such costs through such date.

"Site" shall mean the Anaconda Copper Mine Site, encompassing approximately 3468 acres, located at 103 Birch Drive near Yerington, Nevada, in Lyon County, including portions of Township 13N, Range 25E, Sections 4, 5, 8, 9, 16, 17, 20, and 21 (Mount Diablo Baseline and Meridian) on the Mason Valley and Yerington USGS 7.5 minute quadrangles,

and areas where contamination from the copper mine has come to be located.

"Anaconda Copper Mine 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).

"State" shall mean the State of Nevada.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Work" shall mean all activities performed by Settling Party pursuant to the Unilateral Orders and Consent Orders referred to above.

V. PAYMENT OF RESPONSE COSTS

15. **Payment by Settling Party for Past Response Costs**. Within 30 days after the Effective Date, Settling Party shall pay to EPA $3,000,000 for Past Response Costs.

16. Settling Party shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Such payment shall reference Site/Spill ID Number #09GU and the EPA docket number for this action.

17. The total amount to be paid pursuant to Paragraph 15 shall be deposited by EPA in the Anaconda Copper Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

18. **Notice of Payment**. At the time of payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

ED_001725A_00005650-00006

Such notice shall reference Site/Spill ID Number #09GU and the EPA docket number for this action.

VI. FAILURE TO COMPLY WITH SETTLEMENT

19. **Interest on Late Payments**. If Settling Party fails to make any payment required by Paragraph 15 (Payment by Settling Party for Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

20. **Stipulated Penalty**

20. If any amounts due to EPA under Paragraph 15 (Payment by Settling Party for Past Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 19 (Interest on Late Payments), $1,000 per violation per day that such payment is late.

20. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. Settling Party shall identify all payments to EPA under this Paragraph as "stipulated penalties," shall reference Site/Spill ID Number #09GU and the EPA docket number for this action, and shall make payment by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000]

20. At the time of payment, Settling Party shall send notice that payment has been made as provided in Paragraph 18 (Notice of Payment).

20. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party 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 Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

ED_001725A_00005650-00007

21. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement, if Settling Party fails or refuses to comply with the requirements of this Settlement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Settlement.

VII. COVENANTS BY EPA

23. **Covenants for Settling Party by EPA**. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606 and 9607(a), for the Work and Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement. These covenants extend only to Settling Party, including its successors and assigns, (but only to the extent that the alleged liability of the successor or assign is based on its status and in its capacity as a successor or assign of Settling Party and not to the extent that the alleged liability arose independently of the alleged liability of Settling Party), and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

24. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Settling Party in the future to perform additional activities pursuant to CERCLA or any other applicable law.

25. The covenants set forth in Section VII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Settling Party with respect to all other matters, including, but not limited to:

25. liability for failure by Settling Party to meet a requirement of this Settlement;

25. liability for costs not included within the definition of Past Response Costs;

25. liability for performance of response actions other than the Work;

25. criminal liability;

25. liability for violations of federal or state law that occur after the Effective Date;

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

25. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

26. Nothing in this Settlement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement.

IX. COVENANTS BY SETTLING PARTY

27. **Covenants by Settling Party**. Except as provided in Paragraphs 28, 29, and 30, Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Settling Party's Past Response Costs, and this Settlement, including, but not limited to:

27. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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;

27. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Settling Party's Past Response Costs, and this Settlement; or

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

28. Except as provided in Paragraph 32 (Waiver of Claims by Settling Party), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section VIII (Reservations of Rights by EPA), other than in Paragraph 25.a (liability for failure to meet a requirement of the Settlement), 25.d (criminal liability), or 25.e (violations of federal/state law), but only to the

extent that Settling Party' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

29. Notwithstanding the foregoing Covenants by Settling Party, the Parties agree that this is an administrative settlement and Settling Party expressly reserves the claims or causes of action that Settling Party has or may have pursuant to CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), as a result of this Settlement, against the United States Department of Interior, on behalf of BLM [and ARCO to specify any other federal agencies] based on their alleged status as a potentially responsible party pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), relating to Past Response Costs, Settling Party's Past Response Costs, Work, or this Settlement. However, nothing in this Settlement shall revive any Settling Party claim for costs that would be barred by the applicable statute of limitation nor shall this Settlement extend, alter, or otherwise have any effect on the statute of limitations applicable to such claims or causes of action under CERCLA Section 113(f) referenced in the preceding sentence.

30. Settling Party reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Party's deliverables or activities.

31. Nothing in this Settlement 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).

32. **Waiver of Claims by Settling Party**

32. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

32. **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) **De Minimis/Ability to Pay Waiver.** For response costs relating to

the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay with EPA with respect to the Site.

32. **Exceptions to Waivers**

32. The waivers under this Paragraph 32 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Settling Party.

32. The waiver under Paragraph 32.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

33. Except as provided in Paragraph 32 (Waiver of Claims by Settling Party), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section IX (Covenants by Settling Party), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

34. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Settling Party's Past Response Costs.

ED_001725A_00005650-00011

35. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

36. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

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

38. Effective upon signature of this Settlement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment required by Paragraph 15 (Payment by Settling Party for Past Response Costs) and, if any, Paragraph 20 (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 34 and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XI. ACCESS TO INFORMATION

39. Settling Party shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site, 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 regarding the Site.

40. **Privileged and Protected Claims**

40. Settling Party may assert that all or part of a Record is privileged or

protected as provided under federal law, provided it complies with Paragraph 40.b, and except as provided in Paragraph 40.c

40. If Settling Party asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Party shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Settling Party shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Party's favor.

40. Settling Party may make no claim of privilege or protection regarding:

40. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

40. the portion of any Record that Settling Party are required to create or generate pursuant to this Settlement.

41. **Business Confidential Claims**. Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.

42. Notwithstanding any provision of this Settlement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions relating thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RETENTION OF RECORDS

43. Until 10 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

44. After the conclusion of the 10-year record retention period, Settling Party shall

notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided in Paragraph 40 (Privileged and Protected Claims), Settling Party shall deliver any such Records to EPA.

45. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has 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 and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. NOTICES AND SUBMISSIONS

46. Whenever, under the terms of this Settlement, 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 by email or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement regarding such Party.

As to EPA:

Harold Ball
U.S. EPA, Region IX
75 Hawthorne Street, SFD 8-2
San Francisco, CA 94105
415-972-3047
ball.harold@epa.gov

As to Settling Parties:

Brian Johnson
Atlantic Richfield Company
201 Helios Way
Houston, TX 77079
(713) 909-8147
brian.s.johnson@bp.com

XIV. INTEGRATION

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

XV. PUBLIC COMMENT

48. Final acceptance by EPA of Section V. (Payment of Response Costs) shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the

settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section V (Payment of Response Costs) of this Settlement if comments received disclose facts or considerations that indicate that Section V. (Payment of Response Costs) of this Settlement is inappropriate, improper, or inadequate. Otherwise, Section V. (Payment of Response Costs) shall become effective when EPA issues notice to Settling Party that public comments received, if any, do not require EPA to modify or withdraw from Section V. (Payment of Response Costs) of this Settlement.

XVI. ATTORNEY GENERAL APPROVAL

49. The Attorney General or his designee has approved the response cost settlement embodied in this Settlement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVII. EFFECTIVE DATE

50. This Settlement shall be effective on the latter of 1) the day it is signed by the EPA, or 2) the effective date of the NDEP AOC; with the exception of Section V. (Payment of Response Costs) which shall be effective when EPA issues notice to Settling Party that public comments received, if any, do not require EPA to modify or withdraw from Section V. (Payment of Response Costs).

XVIII. TERMINATION OF ORDERS

51. As of the Effective Date, EPA terminates Unilateral Administrative Order 9-2005-0011 and Unilateral Administrative Order 9-2007-0005. As of the Effective Date, the Parties agree that Administrative Order on Consent 09-2008-0005 and Administrative Order on Consent 09-2009-0010 are terminated.

52. EPA shall not require any Work, additional response actions, reporting, or payment of any response costs, interest, or penalties pursuant to the Unilateral Orders or Consent Orders. Notwithstanding any stated requirements in the Unilateral Orders or Consent Orders, no notices of completion, reports, certifications, or other actions shall be required to effectuate such terminations other than execution of this Settlement and payment of the amount due under Paragraph 15.

ED_001725A_00005650-00015

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

_____
Dated

_____
Enrique Manzanilla
Director, Superfund Division
U.S. EPA, Region IX

FOR ATLANTIC RICHFIELD COMPANY

_____
Dated

_____
Patricia Gallery
Vice President
Atlantic Richfield Company
201 Helios Way, 6.374A
Houston, TX 77079