IN THE [SEQ CHAPTER \h \r 1]UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

UNITED STATES OF AMERICA,

and

THE STATE OF COLORADO

Plaintiffs,

v.

COCA MINES, INC.

Defendant.

CONSENT DECREE

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[TOC \o "1-3" \h \z \u]

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 Colorado ("State"), on behalf of the Colorado Department of Public Health and the Environment ("CDPHE"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERLCA"), 42 U.S.C. § 9607, 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 Nelson Tunnel/Commodore Waste Rock Pile Superfund Site located approximately one mile upstream of the City of Creede in Mineral County, Colorado (the "Site").

B. In response to the release or threatened release of hazardous substances at or from the Site, including the erosion of mine waste from the Commodore Waste Rock Pile and the discharge of contaminated water from the Nelson Tunnel, EPA and CDPHE 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 actions at the Site, EPA and CDPHE 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 Mines" or "Settling Defendant") is a responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C.

§ 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

E. The Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

F. The United States has reviewed the Financial Information, including relevant insurance policies and documents, submitted by Settling Defendant to determine whether Settling 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 Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site.

G. The United States, the State, and Settling Defendant (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 Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry

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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 Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant 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.

"CDPHE" shall mean the Colorado Department of Public Health and the Environment.

"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.

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"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.

"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 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 by CoCa Mines, Inc., and Hecla Limited (f/k/a Hecla Mining Company) pursuant to Section 104(e)€ of CERCLA, 42 U.S.C. § 9604(e), and dated August 14, 2008, December 9, 209, April 8, 2011, February 7, 2013, and March 31, 2014.

"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://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"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.

"Nelson Tunnel/CWRP 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.

"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 Defendant.

"Plaintiff" shall mean the United States.

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

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

"Settling Defendant's Related Parties" shall mean: (i) Settling Defendant's successors and assigns, but only to the extent that the liability of such person is based on the liability of Settling Defendant; (ii) Settling Defendant's 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 Limited (f/k/a Hecla Mining Company) in its capacity as successor to relevant liabilities of CoCa Mines, Inc., including without limitation any assumption of liabilities, whether direct or indirect, express or implied, arising from the ownership and

operations of CoCa Mines, Inc. at the Site; and (iv) the former or current officers, directors and employees of Hecla Limited (f/k/a Hecla Mining Company), 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 Limited (f/k/a Hecla Mining Company).

"Site" shall mean the Nelson Tunnel/Commodore Waste Rock Pile Superfund Site Edge, abutting West Willow Creek, approximately one mile upstream of the City of Creede, Mineral County, Colorado, as generally depicted on the map attached hereto as Appendix A.

"State" shall mean the State of Colorado.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to resolve its alleged civil liability with regard to the Site under Section 107 of CERCLA, 42 U.S.C. § 9607, as provided in the Covenants by Plaintiff 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 Defendant for Response Costs. Settling Defendant shall pay to EPA and CDPHE the principal amount of $6,000,000 within 45 days after the Effective Date and, if timely paid, shall include no interest.

6. Of the principal amount to be paid by Settling Defendant pursuant to Paragraph 5 (Cash Payment by Settling Defendant for Past Response Costs), the sum of $5,400,000 shall be paid within 45 days after the Effective Date to the EPA and deposited into the Nelson Tunnel

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Special Account, to be retained and used by the EPA to fund future response actions at or in connection with the Site, or to be transferred by the EPA to the EPA Hazardous Substance Superfund. Of the principal amount to be paid by Settling Defendant pursuant to Paragraph 5 (Cash Payment by Settling Defendant for Response Costs), $600,000 shall be paid within 45 days after the Effective Date to the CDPHE. If payments are timely paid, they shall include no Interest.

7. Payment Instructions for Response Costs by Settling Defendant. Payments due to the EPA and required by Settling Defendant pursuant to Paragraph 5 (Cash Payment by Settling Defendant for Response Costs) shall be made payment by Fedwire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of Colorado after the Effective Date. The payment instructions provided by the FLU will 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. The FLU will provide the payment instructions to:

Elizabeth H. Temkin
Partner
TEMKIN WIELGA & HARDT LLP
1900 Wazee Street
Suite 303
Denver, CO 80202

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

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8. Deposit of Payment. The total amount to be paid to the EPA pursuant to Paragraph 5 (Cash Payment by Settling Defendant for Response Costs) shall be deposited by EPA in the Nelson Tunnel/CWRP 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.

9. Notice of Payment. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ 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 08MB, and DOJ Case Number 90-11-3-10841.

10. Payment of State Response Costs. Within 45 days after the Effective Date, Settling Defendant shall pay to the State $600,000, in the form of an official bank check and, if timely paid, shall include no interest. The check shall be made payable to [INSERT] and shall reference [INSERT]. Settling Defendant shall send the check to: [INSERT ADDRESS PROVIDED BY STATE.]

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Interest on Late Payments. If Settling Defendant fails to make the payment required by Paragraph 5 (Cash Payment by Settling Defendant for Response Costs) or Paragraph 11 (Payment of State Response Costs) by the required due dates, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

12. Stipulated Penalty.

a. If any amount due as required by Paragraphs 5 (Cash Payment by Settling Defendant for Response Costs) or Paragraph 11 (Payment of State Response Costs) is not paid by the required due dates, Settling Defendant 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), one thousand dollars $1,000 per violation per day that each 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 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"

and shall reference the CDCS Number, Site/Spill ID Number 08MB, and DOJ Case Number 90-11-3-10841. All payments to the State under this Paragraph shall be identified as "stipulated penalties" and shall be made by [INSERT State payment instructions].

c. At the time of payment, Settling Defendant 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:

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

Such notice shall reference the CDCS Number, Site/Spill ID Number 08MB, and DOJ Case Number 90-11-3-10841.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant 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.

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

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

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 Settling Defendant 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

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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 Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), regarding the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Cash Payment by Settling Defendant for Past Response Costs), and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. These covenants extend only to Settling Defendant and do not extend to any other person; provided, however, that 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 Defendant 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 Defendant with respect to:

a. liability for failure of Settling Defendant 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 Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

e. liability based on Settling Defendant's 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 Defendant; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

18. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Paragraph 31 is false or, in any material respect, inaccurate.

X. COVENANTS BY SETTLING DEFENDANT

19. Settling Defendant 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 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 22 (claims against other PRPs) and Paragraph 27 (res judicata and other defenses), these covenants shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by Plaintiff), 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 Defendant's claim arises from the same response action or response costs that the United States 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).

22. Settling Defendant 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) it may have for response costs relating to the Site against Pioneer Natural Resources USA, Inc., Pioneer Natural Resources Company, or any other person who is a potentially responsible party under CERCLA at this Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

23. Except as provided in Paragraph 21 (claims against other PRPs), 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 Defendant), 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).

24. 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 Defendant is 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 or any other person. However, if the United States exercises rights under the reservations in Section VIII (Reservations of Rights by Plaintiff) 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.

25. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States 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 Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

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

XII. RETENTION OF RECORDS AND CERTIFICATION

28. Until three (3) years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of records, reports, or other information (including any records, reports, documents, and other information 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.

29. After the conclusion of the record retention period, Settling Defendant shall notify DOJ and EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by DOJ or EPA, except as provided in Paragraph 29 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to DOJ or EPA.

30. Privileged and Protected Claims.

a. Settling Defendant may assert that all or part of a Record is privileged or protected under the attorney-client privilege or any other privilege recognized by federal law, provided it complies with Paragraph 29.b., and except at provided in Paragraph 29.c.

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

c. Settling Defendant may make no claim of privilege or protection regarding:

(1) 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

(2) the portion of any Record that Settling Defendant is required to generate pursuant to this Consent Decree.

31. Business Confidential Claims. Settling Defendant may assert that all or part of a Record submitted to Plaintiff under this Section 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 Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded protection specified in 40 C.F.R. Part 2, Subpart B. If no claims of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant 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 Defendant.

32. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. 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 and Settling Defendant's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

b. submitted to EPA Financial Information that 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 to EPA and the time Settling Defendant executes this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XIII. NOTICES AND SUBMISSIONS

33. 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

As to EPA:

Laurianne Jackson
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

As to Settling Defendant:

Elizabeth H. Temkin
Partner
TEMKIN WIELGA & HARDT LLP

1900 Wazee Street
Suite 303
Denver, CO 80202

XIV. RETENTION OF JURISDICTION

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

XV. INTEGRATION/APPENDICES

35. 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 Nelson Tunnel Superfund Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. 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.

37. 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

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38. Each undersigned representative of the Settling Defendant and each undersigned representative of the Plaintiff 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.

39. 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 Defendant in writing that it no longer supports entry of the Consent Decree.

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

41. 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 Defendant. 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 ____ DAY OF _____, 2015.

_____
UNITED STATES DISTRICT JUDGE

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