UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER ON CONSENT
Avery Landing Site Avery, Idaho	)	U.S. EPA Region 10 Docket No. CERCLA-10-2012-0141
Potlatch Corporation, Potlatch Forest Products Corporation, and Potlatch Land and Lumber, LLC,	)	PROCEEDING UNDER SECTIONS 104, 106(a), 107(a) and 122(b)(3) of CERCLA,42 U.S.C. §§ 9604, 9606(a), 9607(a) & 9622(b)(3)
SETTLING PARTIES.	)	

Jurisdiction, Background and Purpose

1. This Administrative Order on Consent (AOC) is issued by the United States Environmental Protection Agency (EPA), and is agreed to by Potlatch Corporation (PC), Potlatch Forest Products Corporation (PFPC), and Potlatch Land and Lumber, LLC (PLL). The authority for this AOC is provided by Sections 104, 106(a), 107(a) and 122(b)(3) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9607(a) and 9622(b)(3). This authority has been delegated to the undersigned Director of the Office of Environmental Cleanup.

2. EPA has determined that there is a release or substantial threat of release of hazardous substances into the environment at the Avery Landing Site (Site), and that a removal action is therefore necessary for cleanup of the Site. These determinations are set forth in the *Action Memorandum for the Avery Landing Site located near Avery, Shoshone County, Idaho*, issued on July 5, 2011 (Action Memorandum), and incorporated by this reference herein. The Action Memorandum also sets forth the removal action selected by EPA for cleanup of the Site. The removal action is further based on the administrative record for the Site which is incorporated by this reference herein.

3. The Site is located approximately one mile west of the town of Avery in Shoshone County, Idaho. EPA has initiated performance of the removal action and is currently planning to complete cleanup work at the Site in 2012 for the properties owned by the United States and Lawrence and Ethel Bentcik, as well as the property owned by the Idaho Department of Lands (IDL) which is situated between the Bentcik owned property and the St. Joe River.

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4. To further address cleanup of the Site, EPA issued *Unilateral Administrative Order for Removal Response Action* (Order) to PC, PFPC and PLL in *Docket No. CERCLA-10-2012-0120*. The Order requires PC, PFPC and PLL to perform the removal action at the Site for property owned by PLL (PLL Property), as well as property owned by IDL which is situated between the PLL Property and the St. Joe River (IDL Property).

5. Availing themselves of the opportunity to confer provided in the Order, PC, PFPC and PLL participated in a conference with EPA and provided written information to EPA about the Order. Due to limitations on the timing and conditions for performing cleanup work represented to be beyond their control, PC, PFPC and PLL have claimed an inability to perform all of the removal action in 2012 that is required by the Order. While neither accepting nor rejecting this position, EPA has nonetheless entered into this AOC as an alternative way for assuring the performance in 2012 of at least some elements of the removal action otherwise required to be implemented by PC, PFPC and PLL under the Order.

6. Under this AOC, PC, PFPC and PLL will provide funding for EPA to perform a portion of the removal action on the PLL Property and the IDL Property adjacent thereto at the Site. Settling Parties will pay a minimum amount of $1,750,000 to EPA to be placed into the *Avery Landing Site Special Account* within the EPA Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507. This amount, and any additional money which may be paid under this AOC, will be retained and used by EPA to conduct or finance the removal action in 2012 for the PLL Property and the IDL Property adjacent thereto (Work). The Work is a portion of the removal action set forth in the Action Memorandum for cleanup of these properties, with the remainder of the removal action for these properties to be performed at a later time. Attached as Appendix A to this AOC, and incorporated by this reference herein, is a description of the Work.

7. Concurrent with issuance of this AOC, EPA is holding the Order in suspension and abeyance. The duration of this suspension and abeyance may, in part, be a function of compliance with this AOC as well as the availability to EPA of the funding necessary for complete performance of the Work.

8. This AOC will serve to protect public health and welfare and the environment from an imminent and substantial endangerment at the Site. The state of Idaho has been notified of this AOC in conformance with Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Parties Bound

9. This AOC is binding on PC, PFPC and PLL (hereinafter referred as "Settling Parties"), including their officers, agents and representatives, and any change of ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall not alter the status or responsibilities of Settling Parties under this AOC.

Payment of Response Costs

10. Within 10 calendar days after the effective date of this AOC, Settling Parties shall pay $1,750,000 to EPA in accordance with the procedures specified below. Should EPA determine that additional money is needed to finance the Work, EPA may so notify Settling Parties and within 10 calendar days of receipt this notice, Settling Parties may pay this additional money to EPA in accordance with the procedures specified below.

11. The money paid by Settling Parties under this AOC will be placed into the *Avery Landing Site Special Account* to be retained and used by EPA to conduct or finance the Work. Should any of this money remain following performance of the Work in 2012, the remaining money will be applied first toward the payment of past response costs or future response action at or in connection with the PLL Property and the IDL Property adjacent thereto, and should any of the money remain following those payments, this money will be remitted and returned to Settling Parties.

12. Settling Parties shall make payment to EPA by either Fedwire Electronic Funds Transfer ("EFT") or official bank check. Payment by EFT shall reference Site/Spill ID Number 10KY and the EPA docket number for this action, and shall be sent 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"

Payment by official bank check shall be made payable to "EPA Hazardous Substance Superfund," with the check or accompanying letter identifying the name and address of the party making payment, the Site name, Site/Spill ID Number 10KY, and the EPA docket number for this action. This check shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

At the time of payment, Settling Parties shall send notice that payment has been made, referencing Site/Spill ID Number 10KY and the EPA docket number for this action, to the Federal On-Scene Coordinator for EPA, 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

Accounting for Responses Costs

13. Upon completion of the Work, EPA will send to Settling Parties an accounting of the response costs incurred by EPA in conducting the Work and any other past response costs or future response action at or in connection with the PLL Property and the IDL Property adjacent thereto paid from money paid into the *Avery Landing Site Special Account* by PLL pursuant to this AOC. The accounting shall consist of an EPA SCORPIOS cost summary which will include direct and indirect costs incurred by EPA and its contractors. In addition to the SCORPIOS cost summary, EPA will provide Settling Parties with a summary report which includes information on those removal action project activities directly applicable to the PLL Property and the IDL Property adjacent thereto. The summary report will also include information on the costs incurred for the direct project activities. The money paid hereunder by Settling Parties will be used to fund 100% of the direct project activities.

Access

14. Settling Parties hereby provide consent for access to employees, contractors, agents, consultants, designees and representatives of EPA to the Site and off-Site areas under the ownership or control of Settling Parties for the purpose of performing the removal action. Should Settling Parties transfer an interest in the Site during performance of the removal action, Settling Parties shall remain obligated to allow for and provide access as agreed to herein.

15. Settling Parties do not waive their right of access to the PPL property at the Site during performance of the Work. Nevertheless, should a representative of Settling Parties choose to be present at the Site during performance of the removal action, this representative shall follow all health and safety requirements as determined by EPA, and shall not interfere with or impede EPA or the removal action.

Cooperation of the Parties

16. EPA recognizes that Settling Parties desire to observe the Work to better confirm for them that the payments made by Settling Parties pursuant to this AOC are applied to removal actions on the PLL Property and the IDL Property adjacent thereto. EPA agrees to provide Settling Parties notice in advance of commencement of the Work on the PPL Property and the IDL Property adjacent thereto.

Failure to Comply

17. If Settling Parties fail to make the $1,750,000 payment under paragraph 10 of this AOC by the required due date, interest shall accrue on the unpaid balance through the date of payment. This interest shall be 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.

18. If the $1,750,000 amount due under paragraph 10 of this AOC is not paid by the required date, Settling Parties shall be in violation of this AOC and shall pay to EPA, as a stipulated penalty, in addition to the interest required by paragraph 17 of this AOC, $1,000 per violation per day that such payment is late. If Settling Parties do not comply with any portion of the access provisions in Paragraph 14 or 15 of this AOC, Settling Parties shall be in violation of this AOC and shall pay to EPA, as a stipulated penalty, $500 per violation per day of such noncompliance.

19. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region, and the Site Spill ID Number 10KY. Settling Parties shall send the check (and any accompanying letter) to: U.S. Environmental Protection Agency, Superfund Payments Cincinnati Finance Center, Post Office Box 979076, St. Louis, Missouri 63197-9000.

20. At the time of each payment of stipulated penalties, Settling Parties shall also send notice that payment has been made to EPA in accordance with paragraph 33 of this AOC. Such notice shall reference the EPA Region and the Site/Spill ID Number 10KY.

21. Penalties shall accrue regardless of whether EPA has notified Settling Parties 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 or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment, or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this AOC.

22. If EPA brings an action to enforce this AOC, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

23. Payments made under this *Failure to Comply* section of the AOC shall be in addition to any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this AOC.

24. The obligations of Settling Parties to pay amounts owed EPA under this AOC are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this AOC, the remaining Settling Parties shall be responsible for such payments.

25. Notwithstanding any other provision herein, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this AOC. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by paragraph 10 of this AOC or from performance of any other requirements of this AOC.

Covenants and Reservations

26. Except as specifically provided in paragraphs 27, 28, 29, 31 and 32 below , EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover the response costs paid by Settling Parties under paragraph 10 of this AOC. This covenant not to sue shall take effect upon receipt by EPA of the $1,750,000 payment required by paragraph 10 of this AOC and any amount due under the "Failure to Comply" section of this AOC. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this AOC. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

27. EPA reserves and this AOC is without prejudice to all rights against Settling Parties with respect to all matters not expressly included within paragraph 26 above. Notwithstanding any other provision of this AOC, EPA reserves all rights against Setting Parties, and this AOC is without prejudice to all rights against Settling Parties, with respect to:

a. liability for failure of Settling Parties to meet a requirement of this AOC;

b. liability for costs incurred or to be incurred by EPA that are not paid by Settling Parties in accordance with paragraph 10 of this AOC;

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

d. criminal liability; and

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

28. The payment obligations of Settling Parties under this AOC do not represent any acknowledgement, admission or agreement by EPA that the harm at the Site is capable of divisibility or apportionment, and EPA reserves all rights associated with alleging and establishing strict and joint and several liability against all persons, including but not limited to Settling Parties, for the entire harm at the Site. Further, the money paid by Settling Parties under this AOC does not represent a compromise, cap, ceiling or fair share amount of any response costs for which Settling Parties may be liable with respect to the Site.

29. In addition to the response costs to be incurred to perform the Work, EPA has incurred and will continue to incur response costs to perform common activities necessary for the entire Site. These common response costs are not the subject of this AOC, and EPA retains the right to recover these costs, or any portion thereof, from Settling Parties in another proceeding.

30. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against EPA, or its contractors or employees, with respect to the Work, response costs paid in accordance with paragraph 10 hereunder, or this AOC, including, but not limited to 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.

31. Except as expressly provided herein, EPA and Settling Parties reserve, and this AOC is without prejudice to, all claims and rights against any person or party, including, but not limited to, any potentially responsible party under CERCLA. By agreeing to this AOC, Settling Parties do not admit any liability for the Site. Notwithstanding the covenant provided in paragraph 30 above, should there be money remaining in the Avery Landing Site Special Account following completion of the Work and payment of all costs associated with the Work and with the PPL Property and IDL Property adjacent thereto, and should this remaining money not be remitted and returned to Settling Parties in accordance with paragraph 11 of this AOC, Settling Parties reserve any rights they may have to take action to recoup this remaining money.

32. Nothing in this AOC 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).

Contacts

33. Contacts, notices and communications between EPA and Settling Parties under this AOC shall be directed to the following individuals:

As to EPA:

Earl Liverman, Federal On-Scene Coordinator
U.S. EPA Coeur d'Alene Field Office
1910 Northwest Boulevard, Suite 208
Coeur d'Alene, Idaho 83814
Telephone: (208) 664-4858
Cellular: (b) (6)
Fax: (208) 664-5829
E-Mail: liverman.earl@epa.gov

As to Settling Parties:

Lorrie D. Scott
Vice President, General Counsel and Corporate Secretary
Potlatch Corporation
601 West First Avenue
Suite 1600
Spokane, WA 99201
Telephone: (509) 835-1523
Fax: (509) 343-2809
E-Mail: lorrie.scott@potlatchcorp.com

With a copy to:

Kevin Beaton
Stoel Rives
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-7705
Telephone: (208) 387-4214
kjbeaton@stoel.com

Future Reconciliation

34. It is anticipated at this time that EPA and Settling Parties may be able to reconcile and resolve outstanding performance of response action and payment of response cost issues and claims for the Site following performance in 2012 of the removal action or any portions thereof. It is further understood by EPA and Settling Parties that any portion of the removal action for the Site which is not completed in 2012 is anticipated to be performed in 2013.

Effective Date

35. The effective date of this AOC shall be the date of issuance by EPA.

With respect to this *Administrative Order on Consent* in *Docket No. CERCLA-10-2012-0141*, pertaining to the Avery Landing Site located near the town of Avery in Shoshone County, Idaho,

IT IS SO ISSUED AND ORDERED:

U.S. Environmental Protection Agency

By: Sylvia Kawabata
for Daniel D. Opalski, Director
Office of Environmental Cleanup
Region 10

5-23-2012
Issuance Date

IT IS SO AGREED:

SETTLING PARTY: Potlatch Corporation, Potlatch Forest Products Corporation and Potlatch Land & Lumber, LLC.
Name of Party

By: Brent L. Stinnett
Brent L. Stinnett, Vice President
Name (printed) and Signature of Authorized Official of Settling Party

APPENDIX A

ADMINISTRATIVE ORDER ON CONSENT

DOCKET NO. CERCLA-10-2012-0141

AVERY LANDING SITE

WORK for PLL PROPERTY and ADJACENT IDL PROPERTY

The plan for property boundary transition work and St. Joe River bank protection work for the Avery Landing Site is described below. This plan is intended to safeguard against contamination of clean property and the St. Joe River following work performed by EPA on the properties of Lawrence and Ethel Bentcik (Bentcik) and the United States.

1. Excavation work on Bentcik and United States properties will be performed up to the Potlatch Land and Lumber, LLC (PLL) property boundary. For the St. Joe River bank excavation work will be performed along the section of bank where oil seeps and sheen have historically been observed and as confirmed by field observations. Due to safety considerations associated with slope stability, it is necessary to excavate portions of the PLL property at a 1.5H:1 V slope.

2. Once at the PLL property boundary and in order to ensure that contamination up to the boundary is addressed, excavation work will continue onto PLL property at depth (estimated at 17 to 20 feet below ground surface) for an additional horizontal interval of approximately 10 feet. For the St. Joe River bank, excavation work will be performed back (or inland) approximately 10 feet from the top of the river bank. These intervals are intended to provide a buffer zone to prevent the recontamination of the clean backfill material placed in excavation areas.

3. At the edge of the approximate 10-foot buffer zone, a temporary slope of approximately 1.5H:1V will be laid back onto PLL property. This temporary slope will be laid back to allow for excavation at depth while reducing the potential of side walls caving in.

4. Once the excavation of the slope is completed, a portion of the slope will be covered, as appropriate, with a geotextile fabric as a marker layer to separate clean backfill material from contaminated material. The layers of geotextile fabric will overlap but the seams will not be welded.

5. Clean backfill material will then placed and compacted in excavated areas, including the transition zones as discussed herein, up to the original grade.