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1 LOIS J. SCHIFFER
2 Assistant Attorney General
3 Environment and Natural Resources Division
4 United States Department of Justice
5 Washington, D.C. 20530

SOUTHWEST REGIONAL OFFICE
OFFICE OF GENERAL COUNSEL

6 DAVID B. GLAZER
7 Environmental Enforcement Section
8 Environment and Natural Resources Division
9 United States Department of Justice
10 301 Howard Street, Suite 870
11 San Francisco, California 94105
12 (415) 744-6491

FILED

DEC 8 2000

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY CLERK

13 THOMAS A. BLOOMFIELD
14 Assistant Regional Counsel
15 United States Environmental Protection Agency
16 Region 9
17 75 Hawthorne Street
18 San Francisco, California 94105
19 (415) 744-1317

LOGGED

20 Attorneys for the United States of America
21 (Additional attorneys listed following page)

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

) Civil No. S-91-0768 DFL/JFM

23 Plaintiff,

) (Consolidated for all purposes with

v.

) Civil No. S-91-1167 DFL/JFM)

24 IRON MOUNTAIN MINES, INC.;

25 T.W. ARMAN; and AVENTIS
26 CROPSCIENCE USA INC.,

27 Defendants.

) CONSENT DECREE

28 STATE OF CALIFORNIA, On behalf of the
California Department of Toxic Substances
Control and the California Regional Water
Quality Control Board for the Central Valley
Region,

Plaintiff,

v.

IRON MOUNTAIN MINES, INC.;

T.W. ARMAN; and AVENTIS
CROPSCIENCE USA INC.,

Defendants.

Hon. David F. Levi

AND RELATED CROSS-, COUNTER-
AND THIRD-PARTY-CLAIMS

1185

1 PAUL L. SEAVE
United States Attorney
2 Eastern District of California
YOSHINORI H.T. HIMEL
3 Assistant United States Attorney
501 "I" Street, Suite 10-100
4 Sacramento, California 95814
(916) 554-2760
5
MARTIN F. McDERMOTT
6 Environmental Defense Section
Environment & Natural Resources Division
7 United States Department of Justice
601 "D" Street, N.W., Suite 8000
8 Washington, D.C. 20004
(202) 514-4122
9
MARK A. RIGAU
10 Environmental Defense Section
Environment & Natural Resources Division
11 United States Department of Justice
301 Howard Street, Suite 870
12 San Francisco, California 94105
(415) 744-6491
13
Attorneys for the United States of America
14
BILL LOCKYER
15 Attorney General of the State of California
16
THEODORA BERGER
MARY HACKENBRACHT
17 Assistant Attorneys General
18
SARA RUSSELL, State Bar No. 84704
Deputy Attorney General
19 California Attorney General's Office
P.O. Box 944255
20 Sacramento, California 94244-2550
(916) 324-7853
21
KEN ALEX, State Bar No. 111236
Supervising Deputy Attorney General
22 MARGARITA PADILLA, State Bar No. 99966
Deputy Attorney General
23 California Attorney General's Office
1515 Clay Street
24 Oakland, California 94612
(510) 622-2135
25
26
27
28

1 TIMOTHY V.P. GALLAGHER
2 Gallagher & Gallagher
3 1925 Century Park East
4 Suite 950
5 Los Angeles, California 90067
6 (310) 203-2600

7 DANIEL J. BUCKLEY, State Bar No. 93583
8 BREIDENBACH, BUCKLEY, HUCHTING, HALM
9 & HAMBLET, A Law Corporation
10 611 West Sixth Street, Thirteenth Floor
11 Los Angeles, California 90017-3100
12 (213) 624-3431

13 Attorneys for the State of California,
14 On behalf of the California Regional Water
15 Quality Control Board for the Central Valley Region, et al.

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17
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19
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21
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TABLE OF CONTENTS

1			
2			
3	I.	BACKGROUND	1
4	II.	JURISDICTION	7
5	III.	PARTIES BOUND	8
6	IV.	DEFINITIONS	12
7	V.	GENERAL PROVISIONS	19
8	VI.	PERFORMANCE OF THE WORK BY THE SITE OPERATOR	32
9	VII.	REMEDY REVIEW	32
10	VIII.	QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS	33
11	IX.	ACCESS AND INSTITUTIONAL CONTROLS	34
12	X.	REPORTING REQUIREMENTS	34
13	XI.	OVERSIGHT AGENCY APPROVAL OF PLANS AND	
14		OTHER SUBMISSIONS	34
15	XII.	PROJECT COORDINATORS	34
16	XIII.	ASSURANCE OF ABILITY TO COMPLETE WORK	35
17	XIV.	CERTIFICATION OF COMPLETION	35
18	XV.	EMERGENCY RESPONSE	35
19	XVI.	REIMBURSEMENT OF SOW RESPONSE COSTS	36
20	XVII.	INDEMNIFICATION	36
21	XVIII.	FORCE MAJEURE	37
22	XIX.	DISPUTE RESOLUTION	37
23	XX.	STIPULATED PENALTIES/DAMAGES	40
24	XXI.	COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE	
25		AGENCIES	52
26			
27			
28			

1	XXII.	COVENANTS NOT TO SUE BY THE RELEASED PARTIES, THE SITE	
2		OPERATOR, THE IT PARTIES, THE TRUSTS, AND THE TRUSTEE:	
3		INTERGOVERNMENTAL COVENANTS	62
4	XXIII.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION	72
5	XXIV.	ACCESS TO INFORMATION	74
6	XXV.	RETENTION OF RECORDS	76
7	XXVI.	NOTICES AND SUBMISSIONS	77
8	XXVII.	EFFECTIVE DATE	81
9	XXVIII.	RETENTION OF JURISDICTION	81
10	XXIX.	APPENDICES	82
11	XXX.	COMMUNITY RELATIONS	82
12	XXXI.	MODIFICATION	83
13	XXXII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	83
14	XXXIII.	RESOLUTION OF NATURAL RESOURCE DAMAGE CLAIMS	84
15	XXXIV.	SIGNATORIES/SERVICE	85
16	XXXV.	ADMINISTRATIVE ORDERS	86
17	XXXVI.	FINAL JUDGMENT	86
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the Administrator
3 of the United States Environmental Protection Agency ("EPA"), has filed an Amended
4 Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental
5 Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, against
6 Defendants Rhône-Poulenc, Inc. (now known as Aventis CropScience USA Inc. ("Aventis")),
7 Iron Mountain Mines, Inc., and T.W. Arman ("Defendants").

8 B. The United States in its Amended Complaint seeks reimbursement of costs for
9 response actions at the Iron Mountain Mine Superfund Site in Shasta County, California,
10 together with accrued Interest.

11 C. In accordance with the National Contingency Plan ("NCP") and Section
12 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of California of
13 negotiations with potentially responsible parties regarding the implementation of response
14 actions for the Site, and the State plaintiffs (as described in Paragraph D, below) and the
15 California Department of Fish and Game ("DFG") have participated in such negotiations and
16 are parties to this Consent Decree.

17 D. The State of California, on behalf of the Department of Toxic Substances
18 Control and the Regional Water Quality Control Board for the Central Valley Region ("State
19 plaintiffs"), has also filed a complaint against Defendants in this Court alleging that
20 Defendants are liable to the State plaintiffs under Section 107 of CERCLA, 42 U.S.C. § 9607,
21 for response costs, together with accrued Interest.

22 E. Stauffer Management Company is a Party to this Consent Decree and is also the
23 representative of Defendant Aventis CropScience USA Inc.

24 F. Defendant Aventis has filed counter- and third-party claims against the United
25 States and the State of California alleging that the United States and certain State agencies are
26 liable under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, for response costs.

1 G. None of the Settling Parties or IT Parties, nor Trust I, Trust II, or Trustee (as
2 defined in Section IV of this Consent Decree) admit any liability to the Plaintiffs arising out of
3 the transactions or occurrences alleged in the complaints, nor do they acknowledge that the
4 release or threatened release of hazardous substance(s) at or from the Site constitutes an
5 imminent or substantial endangerment to the public health or welfare or the environment.
6 Neither does the United States nor the State agencies admit any liability to the Settling Parties
7 arising out of the transactions or occurrences alleged in the counter- or third-party claims.

8 H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site
9 on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in
10 the Federal Register on September 8, 1983, 48 Fed. Reg. 40,658.

11 I. In response to a release or a substantial threat of a release of hazardous
12 substances at or from the Site, EPA commenced a Remedial Investigation and Feasibility
13 Study ("RI/FS") for the Site in September 1983, pursuant to 40 C.F.R. § 300.68.

14 J. EPA issued its initial RI/FS in 1985 and an FS Addendum in 1986.

15 K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice
16 of the completion of the FS and of the proposed plan for remedial action in a major local
17 newspaper of general circulation. EPA provided an opportunity for written and oral comments
18 from the public on the proposed plan for remedial action. A copy of the transcript of the
19 public meeting is available to the public as part of the administrative record upon which the
20 Regional Administrator based the selection of the response action.

21 L. The decision by EPA on the first interim remedial action to be implemented at
22 the Site, Operable Unit 1 ("OU 1"), is embodied in a Record of Decision ("ROD 1"),
23 executed on October 3, 1986, on which the State plaintiffs and DFG have given their
24 concurrence. The ROD includes a responsiveness summary to the public comments. Notice
25 of the final plan was published in accordance with Section 117(b) of CERCLA. On May 22,
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1 1991, EPA published notice of an Explanation of Significant Differences relating to ROD 1,
2 with which the State plaintiffs and DFG concurred.

3 M. EPA issued an FS for the Boulder Creek OU ("OU 2") in 1992 and published
4 notice of the completion of the FS and of the proposed plan for remedial action in a major
5 local newspaper of general circulation. EPA provided an opportunity for written and oral
6 comments from the public on the proposed plan for remedial action. A copy of the transcript
7 of the public meeting is available to the public as part of the administrative record upon which
8 the Regional Administrator based the selection of the response action.

9 N. The decision by EPA on the interim remedial action to be implemented at the
10 Site for OU 2 is embodied in a ROD ("ROD 2"), executed on September 30, 1992, on which
11 the State plaintiffs and DFG have given their concurrence. The ROD includes a
12 responsiveness summary to the public comments. Notice of the final plan was published in
13 accordance with Section 117(b) of CERCLA.

14 O. EPA issued an FS for the Old/No. 8 Mine OU ("OU 3") in 1993 and published
15 notice of the completion of the FS and of the proposed plan for remedial action in a major
16 local newspaper of general circulation. EPA provided an opportunity for written and oral
17 comments from the public on the proposed plan for remedial action. A copy of the transcript
18 of the public meeting is available to the public as part of the administrative record upon which
19 the Regional Administrator based the selection of the response action.

20 P. The decision by EPA on the interim remedial action to be implemented at the
21 Site for OU 3 is embodied in a ROD ("ROD 3"), executed on September 24, 1993, on which
22 the State plaintiffs and DFG have given their concurrence. The ROD includes a
23 responsiveness summary to the public comments. Notice of the final plan was published in
24 accordance with Section 117(b) of CERCLA.

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1 Q. EPA issued a Water Management FS to address area sources in the Slickrock
2 Creek and Boulder Creek watersheds in June 1994 and published notice of the completion of
3 the FS and of the proposed plan for remedial action in a major local newspaper of general
4 circulation. EPA provided an opportunity for written and oral comments from the public on
5 the proposed plan for remedial action. A copy of the transcript of the public meeting is
6 available to the public as part of the administrative record upon which the Regional
7 Administrator based the selection of the response action.

8 R. In response to the area source proposed plan, Defendant Rhône-Poulenc, Inc.
9 submitted a Focused Feasibility Study that analyzed remedial alternatives focused on collecting
10 and treating pollution from only the Slickrock Creek Watershed.

11 S. In response to the Focused Feasibility Study, EPA conducted a Boulder Creek
12 Remedial Alternatives Study in 1995, which examined whether the area sources in the Boulder
13 Creek watershed could be remediated. EPA and Rhône-Poulenc submitted their respective
14 analyses to a peer review panel in August 1995.

15 T. EPA issued a revised Water Management Feasibility Study Addendum ("FSA")
16 in May 1996, together with a proposed plan for the Slickrock Creek area source OU ("OU 4")
17 and published notice of the completion of the FSA and of the proposed plan for remedial
18 action in a major local newspaper of general circulation. EPA provided an opportunity for
19 written and oral comments from the public on the proposed plan for remedial action. A copy
20 of the transcript of the public meeting is available to the public as part of the administrative
21 record upon which the Regional Administrator based the selection of the response action.

22 U. The decision by EPA on the interim remedial action to be implemented at the
23 Site for OU 4 is embodied in a ROD ("ROD 4"), executed on September 30, 1997, on which
24 the State plaintiffs and DFG have given their concurrence. The ROD includes a
25 responsiveness summary to the public comments. Notice of the final plan was published in
26 accordance with Section 117(b) of CERCLA.

1 V. The Site Operator (as defined in Section IV of this Consent Decree) will
2 conduct activities at the Site, consistent with this Consent Decree and the attached Statement of
3 Work ("SOW"), which provides for, *inter alia*, continued operation and maintenance of the
4 remedies implemented pursuant to RODs 1-4.

5 W. American International Specialty Lines Insurance Company ("AISLIC") is a
6 party to this Consent Decree solely for purposes of providing financial assurance to the extent
7 set forth in the Iron Mountain Mine Manuscript Clean-Up Cost Cap - Pollution Legal Liability
8 Select Insurance Policy ("Policy"), attached as Appendix J to this Consent Decree, unless the
9 Policy is canceled as to the Site Operator under Section VI, Paragraph G.4 of the Policy.

10 AISLIC is not obligated to perform any of the actions required by the Site Operator under this
11 Consent Decree or the SOW except as set forth in the Policy, nor is AISLIC assuming any
12 liability under this Consent Decree except as set forth in the Policy or arising from the
13 administration thereof. AISLIC is not required to participate in the dispute resolution
14 procedures contained in Section XIX of this Consent Decree except to the extent AISLIC is
15 required to participate under the terms of the Policy. AISLIC has no obligations under the
16 Consent Decree or the Policy until the policy premium and deposit have been paid in full.

17 X. Based on the information presently available to EPA, the State plaintiffs, and
18 DFG, EPA, the State plaintiffs, and DFG believe that the Work will be properly and promptly
19 conducted by the Site Operator if conducted in accordance with the requirements of this
20 Consent Decree and the SOW.

21 Y. The Site Operator, and IT (as defined in Section IV of this Consent Decree) to
22 the extent that it is acting as Site Operator under this Consent Decree, shall be a Response
23 Action Contractor ("RAC") as defined in Section 119(e) of CERCLA, 42 U.S.C. § 9619(e),
24 and the Site Operator's agreement to perform the Work (as defined in Section IV of this
25 Consent Decree) under this Consent Decree and the SOW is an agreement within the meaning
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1 of Section 119(e) of CERCLA. In connection with the Work, Trust I will be owning and the
2 Site Operator will be operating certain facilities at the Site.

3 Z. None of the IT Parties nor the Site Operator, by entering into this Consent
4 Decree and performing the Work under this Consent Decree and the SOW, shall be deemed to
5 be a successor to the potential liabilities of any of the Settling Parties.

6 AA. The Trustee, Trust I, and Trust II shall be afforded the protections provided in
7 Section 107(n) of CERCLA, 42 U.S.C. § 9607(n).

8 AB. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action
9 selected by the RODs and the Work to be performed by the Site Operator shall constitute a
10 response action taken or ordered by the President.

11 AC. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA
12 notified the United States Department of Interior, Fish & Wildlife Service, Bureau of Land
13 Management, Bureau of Reclamation, and the National Park Service; the United States
14 Department of Commerce, National Oceanic and Atmospheric Administration; and DFG of
15 negotiations with potentially responsible parties regarding the release of hazardous substances
16 that may have resulted in injury to the natural resources under federal or state trusteeship.
17 Claims of the Natural Resource Trustees have been resolved as part of this Consent Decree.

18 AD. The Natural Resource Trustees allege that releases of hazardous substances at
19 and from the Site have caused injuries to natural resources, beginning from the start of mining
20 activities at Iron Mountain and continuing to the present day and into the future. Specifically,
21 such injuries include acute and chronic injuries to anadromous and resident fish in watersheds
22 draining Iron Mountain, including tributaries to, and the main stem of, the Sacramento River.
23 Such alleged injuries also include the destruction of flora and fauna in riparian and upland
24 habitat at the Site, as well as the loss of recreational services in areas affected by releases of
25 hazardous substances at and from the Site. The Natural Resource Trustees allege that these
26 injuries have resulted in natural resource damages, including damages for the lost use of

1 natural resources and associated services, damages for restoring, rehabilitating, replacing, or
2 acquiring the equivalent of the affected natural resources, and the costs of assessing the
3 injuries to the affected natural resources. The Settling Parties deny that any such injuries or
4 damages have occurred.

5 AE. The Natural Resource Trustees have undertaken to evaluate the impacts from
6 the Site's discharges on the affected natural resources and propose to carry out certain projects
7 to restore, replace, or acquire the equivalent of such resources or their services. The Natural
8 Resource Trustees will plan and implement the necessary restoration projects, pursuant to
9 Sections 107 and 111 of CERCLA, 42 U.S.C. §§ 9607, 9611, and other relevant federal and
10 state laws.

11 AF. The Parties recognize, and the Court by entering this Consent Decree finds, that
12 this Consent Decree has been negotiated by the Parties in good faith and implementation of
13 this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and
14 complicated litigation between the Parties, and that this Consent Decree is fair, reasonable,
15 and in the public interest.

16 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

17 **II. JURISDICTION**

18 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
19 U.S.C. §§ 1331, 1345 and 1651, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also
20 has personal jurisdiction over the Settling Parties, the Site Operator, IT, ITX, Trust I, Trust
21 II, the Trustee, and AISLIC, which voluntarily submit to this Court's jurisdiction for purposes
22 related to implementation of this Consent Decree and the SOW. Solely for the purposes of
23 this Consent Decree and the underlying complaints, the Settling Parties, the Site Operator, IT,
24 ITX, Trust I, Trust II, the Trustee, and AISLIC waive all objections and defenses that they
25 may have to jurisdiction of the Court or to venue in this District. The Settling Parties, the Site
26 Operator, IT, ITX, Trust I, Trust II, the Trustee, and AISLIC shall not challenge the terms of