

1 above, are able to be fully funded, payment of unrecovered past response costs incurred by the  
2 Oversight and Support Agencies.

3 Disputes that cannot be resolved by consultation between the United States and the State in  
4 accordance with the terms of the MOU or otherwise may be brought to the Court for  
5 resolution, pursuant to Paragraph 103.G of Section XXVIII of this Consent Decree (Retention  
6 of Jurisdiction).

7 VI. PERFORMANCE OF THE WORK BY THE SITE OPERATOR

8 14. Site Activities

9 A. The Site Operator shall perform the Work required by the SOW, meet  
10 the performance standards contained in the SOW, and otherwise comply with the terms of the  
11 SOW and this Consent Decree.

12 B. At the conclusion of the performance period as specified in the SOW, or  
13 if the Court does not approve and enter the Consent Decree (or if its approval and entry is  
14 overturned on appeal of such approval and entry), the Site Operator shall assist the Oversight  
15 Agency in the orderly transition of responsibility for Site activities from the Site Operator to  
16 EPA, the State plaintiffs, or other entity identified by the Oversight Agency and Support  
17 Agency.

18 15. Modification of Work Plans. The Oversight Agency may modify any work  
19 plans developed pursuant to the SOW or Work carried out under the SOW, in accordance with  
20 the terms of the SOW.

21 16. Off-Site Shipment of Waste Material. The Site Operator shall, prior to any off-  
22 site shipment of Waste Material from the Site to an out-of-state waste management facility,  
23 comply with the terms governing such off-site shipment contained in the SOW.

24 VII. REMEDY REVIEW

25 17. Periodic Review. The Site Operator shall assist the Oversight Agency in  
26 remedy review activities conducted under Section 121(c) of CERCLA, in accordance with the

1 SOW.

2 18. EPA Selection of Further Response Actions. If EPA determines, at any time,  
3 that the remedial actions set forth in RODs 1-4 and the actions required by the SOW are not  
4 protective of human health and the environment, EPA may select further response actions for  
5 the Site in accordance with the requirements of CERCLA, the NCP, and applicable federal and  
6 state law. Unless otherwise agreed by the Oversight Agency and the Site Operator, further  
7 response actions, including any further response actions implemented through future records of  
8 decision (such as decisions that address the Boulder Creek area sources and downstream  
9 sediments), or a modification, amendment, or explanation of significant difference of the  
10 RODs, shall neither diminish nor increase the scope of the Site Operator's obligations under  
11 this Consent Decree and the SOW. The provisions of this Paragraph shall not be construed as  
12 enlarging the obligations of the Settling Parties under Paragraph 6 of this Consent Decree, nor  
13 as limiting the rights of the Released Parties under Section XXI of this Consent Decree  
14 (Covenants Not to Sue by the United States and the State agencies).

15 19. Remedy Consultation. The Oversight Agency and the Natural Resource  
16 Trustees will engage in remedy consultation prior to the development of future response  
17 actions at the Site. The Oversight Agency, along with the Natural Resource Trustees, will  
18 develop procedures for implementing remedy consultation under this Paragraph.

19 VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

20 20. The Site Operator shall conduct sampling activities, report the results of such  
21 sampling, and use quality assurance, quality control, and chain of custody procedures as  
22 specified in the SOW.

23 21. Subject only to the provisions of this Consent Decree governing the specific  
24 rights and obligations of the Released Parties and the Site Operator, the United States and the  
25 State hereby retain all of their information-gathering and inspection authorities and rights,  
26 including enforcement actions related thereto, under CERCLA, RCRA and any other

1 applicable federal or state law, statutes, or regulations.

2 IX. ACCESS AND INSTITUTIONAL CONTROLS

3 22. The Settling Parties shall comply with the access and institutional control  
4 requirements contained in the Access Agreement attached to this Consent Decree as Appendix  
5 M.

6 23. The Site Operator shall comply with the access and institutional control  
7 requirements contained in the SOW.

8 24. If the Oversight Agency or the Support Agency determines that land/water use  
9 restrictions in the form of state or local laws, regulations, ordinances or other governmental  
10 controls are needed to implement the interim remedies selected in the RODs, ensure the  
11 integrity and protectiveness thereof, or ensure non-interference therewith, the Site Operator  
12 shall cooperate with the efforts of the Oversight Agency or Support Agency to secure such  
13 governmental controls, in accordance with the SOW.

14 25. Subject only to the provisions of this Consent Decree governing the specific  
15 rights and obligations of the Released Parties and the Site Operator, the United States and the  
16 State retain all of their access authorities and rights, as well as all of their rights to require  
17 land/water use restrictions, including enforcement authorities related thereto, under CERCLA,  
18 RCRA and any other applicable federal or state law, statutes, or regulations.

19 X. REPORTING REQUIREMENTS

20 26. The Site Operator shall comply with all reporting requirements as specified in  
21 the SOW.

22 XI. OVERSIGHT AGENCY APPROVAL OF PLANS AND OTHER SUBMISSIONS

23 27. The Site Operator shall submit all plans and other deliverables for approval by  
24 the Oversight Agency and Support Agency, as specified in the SOW.

25 XII. PROJECT COORDINATORS

26 28. Project Coordinators and Alternate Project Coordinators shall be designated as  
27

1 specified in the SOW.

2 29. Plaintiffs may designate other representatives, including, but not limited to,  
3 EPA and State employees, and federal and State contractors and consultants, to observe and  
4 monitor the progress of any activity undertaken pursuant to this Consent Decree and the SOW.  
5 EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully  
6 vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the  
7 National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or  
8 Alternate Project Coordinator shall have authority, consistent with the National Contingency  
9 Plan, to halt any activity required by this Consent Decree and to take any necessary response  
10 action when s/he determines that conditions at the Site constitute an emergency situation or  
11 may present an immediate threat to public health or welfare or the environment due to release  
12 or threatened release of Waste Material.

13 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

14 30. The Site Operator shall assure its financial ability to perform the activities  
15 required by this Consent Decree and the SOW as set forth in the SOW.

16 31. AISLIC shall provide financial assurances to the extent required by the Policy.

17 XIV. CERTIFICATION OF COMPLETION

18 32. Completion of Performance. The Site Operator shall comply with the  
19 procedures governing certification of completion of the activities required under this Consent  
20 Decree and the SOW, as specified in the SOW.

21 XV. EMERGENCY RESPONSE

22 33. The Site Operator shall comply with the emergency response procedures  
23 specified in the SOW.

24 34. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed  
25 to limit any authority of the United States or the State to take all appropriate action to protect  
26 human health and the environment or to prevent, abate, respond to, or minimize an actual or  
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1 threatened release of Waste Material on, at, or from the Site, subject to Section XXI of this  
2 Consent Decree (Covenants Not to Sue by the United States and the State agencies).

3 XVI. REIMBURSEMENT OF SOW RESPONSE COSTS

4 35. In the event that any SOW Response Costs are owing to the Oversight Agency  
5 under Paragraph 76 of this Consent Decree and the SOW, the Site Operator shall remit such  
6 amounts within 30 days of receipt of a notice requiring payment, unless the Site Operator  
7 invokes the Dispute Resolution provisions of Section XIX. If the Site Operator invokes  
8 Dispute Resolution to dispute its liability for, the amount of, or payment of SOW Response  
9 Costs, the Site Operator shall pay any SOW Response Costs determined to be owing within 30  
10 days of final resolution of the dispute. The Site Operator shall make all payments owing in  
11 accordance with the procedures set forth in Paragraph 37 of this Consent Decree.

12 36. In the event that the payments required by Paragraph 35 are not made within 30  
13 days of the Site Operator's receipt of a notice requiring such payment, the Site Operator shall  
14 pay Interest on the unpaid balance. The Interest on such SOW Response Costs shall begin to  
15 accrue on the date of the notice. The Interest shall accrue through the date of the Site  
16 Operator's payment. Payments of Interest made under this Paragraph shall be in addition to  
17 such other remedies or sanctions available to Plaintiffs by virtue of the Site Operator's failure  
18 to make timely payments under this Section.

19 37. The Site Operator shall make all payments required under this Section by EFT  
20 or other mechanism in accordance with instructions furnished by the Oversight Agency with  
21 its notice requiring such payment.

22 XVII. INDEMNIFICATION

23 38. The United States and the State do not assume any liability by entering into this  
24 agreement or by virtue of any designation of the Site Operator as EPA's authorized  
25 representative under Section 104(e) of CERCLA. Neither the United States nor the State shall  
26 be held out as a party to any subcontract entered into by or on behalf of the Site Operator in  
27

1 carrying out activities pursuant to this Consent Decree. Neither the Site Operator nor any  
2 subcontractor shall be considered an agent of the United States or the State.

3 39. The Site Operator waives all claims against the United States and the State for  
4 damages or reimbursement or for set-off of any payments made or to be made to the United  
5 States or the State, arising from or on account of any contract, agreement, or arrangement  
6 between the Site Operator and any subcontractor, agent, or other person retained in connection  
7 with performance of activities required by this Consent Decree. In addition, the Site Operator  
8 shall indemnify and hold harmless the United States and the State with respect to any and all  
9 claims for damages or reimbursement arising from or on account of any contract, agreement,  
10 or arrangement between the Site Operator and any subcontractor, agent, or other person  
11 retained in connection with performance of activities required by this Consent Decree. The  
12 Site Operator shall further provide for indemnification to the United States and the State as  
13 provided for in the SOW.

#### 14 XVIII. FORCE MAJEURE

15 40. The Site Operator may invoke claims of Force Majeure only in accordance with  
16 the procedures specified in the SOW.

17 41. Disputes concerning any claim of Force Majeure shall be resolved in  
18 accordance with the dispute resolution procedures set forth in Section XIX (Dispute  
19 Resolution).

#### 20 XIX. DISPUTE RESOLUTION

21 42. Unless otherwise expressly provided for in this Consent Decree or the SOW,  
22 the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve  
23 disputes between the Oversight Agency and the Site Operator arising under or with respect to  
24 this Consent Decree and the SOW. However, the procedures set forth in this Section shall not  
25 apply to actions by the United States or the State to enforce obligations of the Site Operator  
26 that have not been disputed in accordance with this Section. Subject to the reservations  
27

1 contained in Paragraphs 74.B-E and 75.D, further proceedings with respect to the Site  
2 Operator's compliance with this Consent Decree and the SOW shall be brought in this Court,  
3 as provided for in Paragraph 103.C, except as otherwise required by law. Where AISLIC is a  
4 party to a dispute with the Oversight Agency, AISLIC shall participate in, and be bound by,  
5 the Dispute Resolution procedures of this Section in the same manner and to the same extent as  
6 the Site Operator.

7 43. Any dispute that arises between the Oversight Agency and the Site Operator  
8 under or with respect to this Consent Decree or the SOW shall in the first instance be the  
9 subject of informal negotiations between the parties to the dispute. The period for informal  
10 negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by  
11 written agreement of the parties to the dispute. The dispute shall be considered to have arisen  
12 when one party sends the other parties a written Notice of Dispute. All Parties shall make  
13 reasonable efforts to informally resolve disputes at the Project Manager/Coordinator or  
14 immediate-supervisor level.

15 44. A. In the event that the parties cannot resolve a dispute by informal  
16 negotiations under the preceding Paragraph, then the position advanced by the Oversight  
17 Agency shall be considered binding unless, within 14 days after the conclusion of the informal  
18 negotiation period, the Site Operator invokes the formal dispute resolution procedures of this  
19 Section by serving on the Oversight Agency and Support Agency a written Statement of  
20 Position on the matter in dispute, including, but not limited to, any factual data, analysis or  
21 opinion supporting that position and any supporting documentation relied upon by the Site  
22 Operator.

23 B. Within 21 days after receipt of the Statement of Position submitted by  
24 the Site Operator, the Oversight Agency after consultation with the Support Agency will serve  
25 on the Site Operator its Statement of Position, including, but not limited to, any factual data,  
26 analysis, or opinion supporting that position and all supporting documentation relied upon by

1 the Oversight Agency. Within 14 days after receipt of Oversight Agency's Statement of  
2 Position, the Site Operator may submit a Reply.

3 45. Formal dispute resolution shall be governed by this Paragraph.

4 A. Following receipt of the Statement of Position of the Site Operator,  
5 submitted pursuant to Paragraph 44.A, and after consultation with the Support Agency, the  
6 Director of the Superfund Division, EPA Region 9, if EPA is the Oversight Agency, or the  
7 equivalent State official(s), if the State plaintiffs are serving as Oversight Agency, will issue a  
8 final decision resolving the dispute. The Oversight Agency's decision shall be binding on the  
9 Site Operator unless, within 10 days of receipt of the decision, the Site Operator files with the  
10 Court and serves on the parties a motion for judicial review of the decision setting forth the  
11 matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the  
12 schedule, if any, within which the dispute must be resolved to ensure orderly implementation  
13 of the Consent Decree. The Oversight Agency after consultation with the Support Agency  
14 may file a response to the motion.

15 B. In any dispute under this Paragraph, the Site Operator shall bear the  
16 burden of demonstrating, to the satisfaction of the Court, that its position achieves the  
17 objectives of this Consent Decree and the SOW. The Oversight Agency shall bear the burden  
18 of production concerning the calculation of Stipulated Penalties or Damages it asserts are  
19 owing as to matters in dispute.

20 46. The invocation of formal dispute resolution procedures under this Section shall  
21 not extend, postpone or affect in any way any obligation of the Site Operator under this  
22 Consent Decree, not directly in dispute, unless the Oversight Agency or the Court agrees  
23 otherwise. Stipulated Penalties/Damages with respect to the disputed matter shall continue to  
24 accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph  
25 62. Notwithstanding any stay of payment, Stipulated Penalties/Damages shall accrue from the  
26 first day of noncompliance with any applicable provision of this Consent Decree. In the event



1 that the Site Operator does not prevail on the disputed issue, Stipulated Penalties/Damages  
2 shall be assessed and paid as provided in Section XX (Stipulated Penalties/Damages);  
3 provided, however, that if the Site Operator does not prevail in Dispute Resolution, the Site  
4 Operator shall not be subject to Stipulated Penalties/Damages that accrue during the Dispute  
5 Resolution process for portions of Work or portions of submittals that are directly in dispute if  
6 the Site Operator can show (1) that its position was substantially justified, (2) that the item of  
7 Work in dispute was not materially defective, and (3) that invocation of Dispute Resolution  
8 was not an abuse of the Dispute Resolution Process. Even if the Site Operator is unable to  
9 make such a showing, the Oversight Agency in its discretion may elect to waive or reduce any  
10 Stipulated Penalties/Damages otherwise owing.

11 XX. STIPULATED PENALTIES/DAMAGES

12 47. The Settling Parties shall be liable for Stipulated Penalties/Damages to the  
13 United States in the amounts set forth below, to accrue per violation per day, for any  
14 noncompliance by the Settling Parties with the payment requirements of Paragraph 6 this  
15 Consent Decree:

16 Penalty Per Violation Per Day	Period of Noncompliance
17 \$5,000	1st through 14th day
18 \$10,000	15th through 30th day
19 \$15,000	31st day and beyond

20 48. All Stipulated Penalties/Damages accruing under Paragraph 47 shall be due and  
21 payable to the United States within 30 days of the Settling Parties' receipt from EPA of a  
22 demand for payment of the penalties. All payments to the United States under Paragraph 47  
23 shall be paid to the Iron Mountain Mine Superfund Site Special Account, by Electronic Funds  
24 Transfer ("EFT") in accordance with instructions to be provided to the Settling Parties by EPA  
25 following lodging of this Consent Decree. A transmittal letter referencing any such payment  
26 shall refer to the Site/Spill ID # 0917, the DOJ case number 90-11-3-196A, and the name and  
27

1 address of the party making payment and shall be sent to EPA and the State agencies as  
2 provided in Section XXVI of this Consent Decree (Notice and Submissions) and to:

3 Catherine Shen  
4 U.S. Environmental Protection Agency  
5 Region IX, Attn: Superfund Accounting  
6 P.O. Box 360863M  
7 Pittsburgh, PA 15251

8 49. The payment of penalties shall not alter in any way the Settling Parties'  
9 obligations under this Consent Decree.

10 50. If the Settling Parties fail to pay Stipulated Penalties/Damages when due, the  
11 United States may institute proceedings to collect the penalties, as well as Interest. The  
12 Settling Parties shall pay Interest on the unpaid balance, which shall begin to accrue on the  
13 date of demand made pursuant to Paragraph 48.

14 51. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
15 any way limiting the ability of the United States or the State to seek any other remedies or  
16 sanctions available by virtue of the Settling Parties' violation of this Consent Decree.

17 52. The Site Operator shall be liable for Stipulated Penalties/Damages for failure to  
18 comply with the requirements of this Consent Decree and the SOW, as set forth in this  
19 Section, unless excused under Section XVIII (Force Majeure).

20 53. As set forth below, Stipulated Penalties/Damages are assessed under four  
21 general circumstances:

22 A. Failure to collect, convey and treat all Designated Contaminant  
23 Discharges as required by the SOW;

24 B. Failure to timely or properly complete submittals required by the SOW  
25 or this Consent Decree.

26 C. Failure to comply with selected O&M requirements of the SOW; and

27 D. Failure to comply with other O&M requirements of the SOW.

28 If a failure to comply with this Consent Decree and SOW triggers Stipulated

1 Penalties/Damages under more than one of these circumstances, the higher Stipulated Penalty  
2 will apply.

3 54. Stipulated Penalties/Damages are calculated on a daily basis. Except as  
4 otherwise provided in this Consent Decree, all Stipulated Penalties/Damages continue to  
5 accrue until the improper discharge ceases or until the failure to comply with O&M  
6 requirements or the failure to timely or properly complete reports is rectified.

7 55. Stipulated Penalties/Damages shall be calculated in the following manner,  
8 except to the extent prohibited by statute:

9 A. Release or discharge of Designated Contaminant Discharge

10 (1) Trigger: Any discharge or release into the environment of  
11 Designated Contaminant Discharge except as specifically allowed in the SOW.

12 (2) Stipulated Penalties/Damages Calculation: For each day of  
13 violation, Stipulated Penalties of \$10,000 plus a Stipulated Damage amount of two (2) times  
14 the Estimated Cost (as calculated below) of treating the released Designated Contaminant  
15 Discharge. The Estimated Cost of AMD treatment shall be \$25 per 1000 gallons of treated  
16 AMD (increased by the Inflation Escalator as defined in the SOW).

17 (3) Stipulated Penalties/Damages Calculation for limited releases that  
18 do not enter surface waters: Notwithstanding Subparagraph (2), above, if, including the  
19 release at issue, there have been three or fewer releases or discharges of Designated  
20 Contaminant Discharges into the environment over the last 5 years, and if the Site Operator  
21 establishes that (i) the total current release is 10 gallons or less and (ii) that the current release  
22 did not enter the surface waters either directly or indirectly, then for each day of violation  
23 Stipulated Penalties/Damages are assessed as follows:

Period of Non-Compliance	Daily Stipulated Penalty Amount
1st through 14th day	\$2,000
15th through 30th day	\$4,000
31st day and beyond	\$5,000

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B. Failure to complete submittals in a timely or proper manner.

(1) Trigger: Any failure to timely provide complete workplans and reports meeting the requirements of the SOW and the Performance Standards and Verification Plan.

(2) Stipulated Penalty Calculation: If the Oversight Agency disapproves or modifies a plan, report or item due to a material defect, Stipulated Penalties/Damages are measured from the date the plan, report or item was initially due. (SOW Section 7.11). If a plan, report or item is not timely submitted, but is otherwise proper and complete, Stipulated Penalties/Damages are measured from five working days after the Oversight Agency provides notice to the Site Operator that the plan, report or item is overdue. Stipulated Penalties/Damages commence on the 5<sup>th</sup> working day after written notice is sent to the Site Operator of a failure to timely or properly complete required workplans or reports. Stipulated Penalties/Damages will not be assessed if the failure is rectified within the 5 working day period. If it is not, Stipulated Penalties/Damages are assessed as follows:

Period of Non-Compliance (Days start after expiration of 5 working day period.)	Daily Stipulated Penalty Amount
1 <sup>st</sup> through 14 <sup>th</sup> day	\$1,000
15 <sup>th</sup> through 30 <sup>th</sup> day	\$2,000
31 <sup>st</sup> day and beyond	\$5,000

C. Failure to Comply with Selected O&M Requirements.

(1) Triggers:

(a) Failure to comply with the access requirements for Critical Access Roads and Important Access Roads. (SOW Section 8.6);

(b) Failure to comply with the requirements for Clean Water Diversions. (SOW Sections 8.11; 9.10.2.2; 9.10.3.2; and 9.10.4.2, regarding inspection and