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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

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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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18  
19  
20  
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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,  
26  
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28

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  
26

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

1 | this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree;  
2 | however, the Site Operator and IT, to the extent that IT is acting as Site Operator under this  
3 | Consent Decree, may seek to have the Court construe the terms of this Consent Decree as  
4 | provided in Section XIX (Dispute Resolution).

5 | **III. PARTIES BOUND**

6 |       2. This Consent Decree applies to and is binding upon the United States and the  
7 | State of California, on behalf of the Department of Toxic Substances Control, the California  
8 | Hazardous Substance Account, the California Hazardous Substance Cleanup Fund, the  
9 | California Toxic Substances Control Account, the Regional Water Quality Control Board for  
10 | the Central Valley Region, the State Water Resources Control Board, the Department of Fish  
11 | and Game, and the State Lands Commission, and upon the Settling Parties, the Site Operator,  
12 | IT, ITX, Trust I, Trust II, the Trustee, and AISLIC, and upon their successors and assigns.  
13 | Any change in ownership or corporate status of the Settling Parties, the Site Operator, IT,  
14 | ITX, the Trust I, Trust II, the Trustee, and AISLIC including, but not limited to, any transfer  
15 | of assets or real or personal property, shall in no way alter their responsibilities under this  
16 | Consent Decree, except as provided in Paragraph 3, below. However, in the event that the  
17 | Policy is canceled as to the Site Operator before the Effective Date of the Consent Decree  
18 | pursuant to Section VI, Paragraph G.4 of the Policy, then IT, ITX, and any other IT Parties  
19 | (including without limitation IT Iron Mountain Operations LLC and IT Administrative  
20 | Services LLC) shall not be bound by this Consent Decree or have any liability to any party  
21 | hereto under this Consent Decree, and all references to them in this Consent Decree shall be  
22 | disregarded and of no force or effect.

23 |       3. Transferability.

24 |       A. General. The Site Operator may request that the Oversight Agency (as  
25 | defined in Section IV of this Consent Decree) approve an assignment, delegation, or other  
26 | transfer of the Site Operator's duties and obligations under this Consent Decree and the SOW

1 to a transferee. The Site Operator's obligations under this Consent Decree and SOW may not  
2 be assigned without the written concurrence of the Oversight Agency.

3 B. Procedure. If the Site Operator makes a request for approval of a  
4 transfer of its duties and obligations to a transferee other than IT, it shall submit information  
5 sufficient to allow the Oversight Agency to make an informed decision as to whether the  
6 proposed transfer of duties and obligations is acceptable and consistent with the terms and  
7 purposes of this Consent Decree. The Oversight Agency will not unreasonably withhold  
8 approval where the qualifications of the proposed transferee are equal or superior to those of  
9 the Site Operator and are otherwise acceptable to the Oversight Agency. In making its  
10 determination, the Oversight Agency may consider the following factors, or any combination  
11 of them:

12 (1) The experience of the Oversight Agency or other government  
13 agencies with the proposed transferee's performance, including the transferee's proclivity  
14 towards claims and disputes;

15 (2) The business reputation of the proposed transferee;

16 (3) The longevity and stability of the proposed transferee, including  
17 the proposed transferee's likely viability during the remaining term of the SOW;

18 (4) The proposed transferee's technical qualifications for performing  
19 the Work required by the SOW;

20 (5) The proposed transferee's financial ability to successfully  
21 complete the obligations of the SOW;

22 (6) The proposed transferee's financial ability to meet the financial  
23 assurance requirements of the SOW and Consent Decree;

24 (7) The proposed transferee's financial ability to pay Stipulated  
25 Penalties/Damages or other damages and amounts that could be assessed pursuant to the SOW;

26 (8) The continued responsibility of the Site Operator's corporate  
27

1 guarantor; or the financial strength of any proposed corporate guarantor of the proposed  
2 transferee;

3 (9) The identity, qualifications, experience, organizational and  
4 management skills of the proposed transferee's key project personnel;

5 (10) The proposed transferee's agreement to commit its key project  
6 personnel to the Work;

7 (11) The proposed transferee's agreement to be bound by all of the  
8 Site Operator's agreements under the Consent Decree and SOW; and

9 (12) Other relevant factors.

10 Any such request for approval shall be in writing and accompanied by: (1) audited financial  
11 statements of the proposed transferee and any guarantor for its most recent completed fiscal  
12 year and unaudited financial statements through the end of the proposed transferee's and any  
13 guarantor's most recent fiscal quarter; (2) a statement of the qualifications of the proposed  
14 transferee and any guarantor; (3) a statement of the identity, qualifications, experience and  
15 organizational and management skills of the proposed transferee's key project personnel; and  
16 (4) any other submissions considered appropriate by the proposed transferee.

17 C. Merger or Acquisition. If the Site Operator, or its corporate guarantor

18 (1) is merged into another corporation or legal entity;

19 (2) is purchased, or

20 (3) substantially all of its assets are purchased,

21 such merger or acquisition will be considered a transfer subject to approval under this  
22 Paragraph. If the transfer effected by such merger or acquisition is not acceptable as a transfer  
23 under this Paragraph, the Oversight Agency may elect to perform a work takeover under  
24 Section 7.16 of the SOW.

25 D. Successor Trusts and Trustees. Trust I, Trust II, or Trustee may also  
26 request that the Oversight Agency approve appointment of a successor Trustee or

1 establishment of a successor Trust and, in making any such request, shall furnish the  
2 Oversight Agency with information sufficient to allow it to make an informed decision as to  
3 whether the appointment of the proposed successor Trustee or establishment of the proposed  
4 successor Trust is acceptable and consistent with the terms and purposes of this Consent  
5 Decree.

6 E. Terms Applicable. In the event of the Site Operator's or corporate  
7 guarantor's transfer of duties and obligations to a transferee, such duties and obligations shall  
8 be transferred to the transferee consistent with the terms of the transfer as approved by the  
9 Oversight Agency and, upon that occurrence, the Site Operator and/or corporate guarantor  
10 shall be relieved of such duties and obligations pursuant to the terms of the transfer as  
11 approved by the Oversight Agency. In the case of the appointment of a successor Trustee or  
12 the establishment of a successor Trust, the successor Trustee or Trust shall succeed to all the  
13 rights, title, duties, and obligations of its predecessor.

14 F. Dispute Resolution. Disputes concerning the transfer of the Site  
15 Operator's duties and obligations, the appointment of a successor Trustee, or the establishment  
16 of a successor Trust shall be resolved in accordance with Section XIX of this Consent Decree  
17 (Dispute Resolution). In any such dispute, the Oversight Agency's determination that the  
18 proposed transfer of the Site Operator or corporate guarantor's duties and obligations,  
19 appointment of a successor Trustee, or establishment of a successor Trust is unacceptable and  
20 inconsistent with the terms and purposes of this Consent Decree shall be accorded substantial  
21 deference. Where the Site Operator or corporate guarantor notifies the Oversight Agency and  
22 the Support Agency (as defined in this Consent Decree) that time is of the essence, the  
23 Oversight Agency and the Support Agency will use best efforts to make as timely  
24 determination as is practicable under the circumstances. If the proposed transfer is rejected by  
25 the Oversight Agency (after consultation with the Support Agency as provided for by  
26 Paragraph 13), the Site Operator or corporate guarantor may invoke Dispute Resolution under  
27



1 Paragraph 45.A of this Consent Decree.

2 G. Confirmation. At the end of the Performance Period (as provided in the  
3 SOW) or upon any approved transfer of duties and obligations, appointment of a successor  
4 Trustee, or establishment of a successor Trust, the Oversight Agency, Support Agency, and  
5 the Site Operator, Trustee, or Trust, as appropriate, shall execute such documents, or join in  
6 such further proceedings, as are appropriate and lawful, to confirm, effectuate, or recognize  
7 any such proposed transfer of the Site Operator or corporate guarantor's duties and  
8 obligations, appointment of a successor Trustee, or establishment of a successor Trust, as  
9 agreed or as ordered by the Court under Section XIX of this Consent Decree.

10 IV. DEFINITIONS

11 4. Unless otherwise expressly provided herein, terms used in this Consent Decree  
12 which are defined in CERCLA or in regulations promulgated under CERCLA shall have the  
13 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below  
14 are used in this Consent Decree or in the appendices attached hereto and incorporated  
15 hereunder, the following definitions shall apply:

16 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation,  
17 and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

18 "Consent Decree" shall mean this Consent Decree and all appendices attached hereto  
19 (listed in Section XXIX). In the event of conflict between this Consent Decree and any  
20 appendix, this Consent Decree shall control.

21 "Court" shall mean the United States District Court for the Eastern District of  
22 California.

23 "CHSA" shall mean the California Hazardous Substance Account as defined in Section  
24 25330 of the California Health and Safety Code.

25 "CHSCF" shall mean the California Hazardous Substance Cleanup Fund as defined in  
26 Section 25385.3 of the California Health and Safety Code.

1 "CTSCA" shall mean the California Toxic Substances Control Account as defined in  
2 Section 25173.6 of the California Health and Safety Code.

3 "CVRWQCB" shall mean the California Regional Water Quality Control Board for the  
4 Central Valley Region and any predecessor and successor agency, officials and employees,  
5 provided and to the extent that any such individuals were acting within the scope of their  
6 duties and in their capacity as officials or employees.

7 "Date of Final Approval of this Consent Decree" shall mean the later of (1) the date on  
8 which the Court has approved and entered this Consent Decree as a judgment and all  
9 applicable appeal periods have expired without an appeal being filed, or (2) if an appeal is  
10 taken, the date on which the Court's judgment is affirmed and there is no further right to  
11 appellate review.

12 "Day" shall mean a calendar day unless expressly stated to be a working day.  
13 "Working day" shall mean a day other than a Saturday, Sunday, or state or federal holiday. In  
14 computing any period of time under this Consent Decree, where the last day would fall on a  
15 Saturday, Sunday, or state or federal holiday, the period shall run until the close of business of  
16 the next working day.

17 "DFG" shall mean the California Department of Fish and Game and any predecessor  
18 and successor agency, officials and employees, provided and to the extent that any such  
19 individuals were acting within the scope of their duties and in their capacity as officials or  
20 employees.

21 "DTSC" shall mean the California Department of Toxic Substances Control and any  
22 predecessor and successor agency, officials and employees, provided and to the extent that any  
23 such individuals were acting within the scope of their duties and in their capacity as officials  
24 or employees.

25 "EPA" shall mean the United States Environmental Protection Agency and any  
26 successor departments or agencies of the United States.

1 "Effective Date" shall mean the date defined in Section XXVII of this Consent Decree.

2 "Interest" shall mean interest at the rate specified for interest on investments of the  
3 Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of  
4 the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C.  
5 § 9607(a).

6 "IT" means IT Corporation, a California corporation, which is a subsidiary of ITX.

7 "IT Parties" means ITX and its subsidiary corporations, as well as any predecessors or  
8 successors thereof, to the extent of any derivative liability attributable to any such entities; the  
9 Site Operator (if an affiliate of one or more of the IT Parties described herein), as well as any  
10 successors; and each of their respective officers, directors, and employees, members, and  
11 managers, provided and to the extent that any such individuals were acting within the scope of  
12 their duties and in their capacity as officers, directors, or employees, members, or managers.

13 "ITX" means The IT Group, Inc. a Delaware corporation, which is jointly and  
14 severally liable with the Site Operator under this Consent Decree.

15 "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous  
16 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA,  
17 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

18 "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA,  
19 42 U.S.C. § 9601(16), and as used in Section 311 of the Clean Water Act, 33 U.S.C. § 1321,  
20 and under applicable provisions of state law.

21 "Natural Resource Damages" shall mean damages, including the costs of damage  
22 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311 of the  
23 Clean Water Act, 33 U.S.C. § 1321, and applicable provisions of state law, for injury to,  
24 destruction of, or loss of any and all Natural Resources.

25 "Natural Resource Trustees" as used in this Consent Decree shall mean the United  
26 States Department of the Interior through the United States Fish and Wildlife Service, the

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28

1 United States Bureau of Land Management, the United States Bureau of Reclamation, and the  
2 National Park Service; the National Oceanic and Atmospheric Administration; and DFG.

3 "Oversight Agency" shall mean the agency (ies) of the United States or the State of  
4 California that serves as the "lead agency" within the meaning of the NCP.

5 "Paragraph" shall mean a portion of this Consent Decree identified by an arabic  
6 numeral or an upper case letter.

7 "Parties" shall mean the United States; the State of California, on behalf of DTSC, the  
8 CHSA, the CHSCF, the CTSCA, the CVRWQCB, DFG, the State Water Resources Control  
9 Board ("SWRCB"), and the State Lands Commission ("SLC") ("the State agencies"); the  
10 Settling Parties; the Site Operator, IT, ITX, Trust I, Trust II, the Trustee, and AISLIC.

11 "Plaintiffs" shall mean the United States and the State of California on behalf of DTSC  
12 and the CVRWQCB.

13 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et  
14 seq. (also known as the Resource Conservation and Recovery Act).

15 "Records of Decision" or "RODs" shall mean RODs 1-4, and all attachments thereto.  
16 RODs 1-4 are attached as Appendices A-D to this Consent Decree.

17 "Released Parties" means the Settling Parties and Aventis CropScience USA, LP,  
18 Rhodia, Inc., Imperial Chemical Industries PLC, ICI International Investments, Inc., Zeneca  
19 Holdings, Inc., Stauffer Chemical Company (a former corporation organized under the laws of  
20 the State of Delaware), Mountain Copper Company, Ltd.(a former corporation organized  
21 under the laws of Great Britain), Mountain Copper Company of California (a former  
22 corporation organized under the laws of the State of California), and Iron Mountain  
23 Corporation (a former corporation organized under the laws of the State of California),  
24 together with any of their predecessor or successor entities, and direct or indirect parents or  
25 subsidiaries, to the extent of any derivative liability attributable to any such entities, and  
26 further includes any of such entities' current or former officers, directors, and employees.

1 provided and to the extent that any such individuals were acting within the scope of their  
2 duties and in their capacity as officers, directors, or employees.

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

4 "Settling Defendant" means defendant Aventis CropScience USA Inc., formerly known  
5 as Stauffer Chemical Company, Rhône-Poulenc Basic Chemicals Company, and  
6 Rhône-Poulenc, Inc.

7 "Settling Parties" means the Settling Defendant, Stauffer Management Company, and  
8 Atkemix Thirty-Seven Inc. (a wholly owned subsidiary of Stauffer Management Company),  
9 together with any of their predecessor or successor entities, and direct or indirect parents or  
10 subsidiaries, to the extent of any derivative liability attributable to any such entities, and  
11 further includes any of such entities' current or former officers, directors, and employees,  
12 provided and to the extent that any such individuals were acting within the scope of their  
13 duties and in their capacity as officers, directors, or employees.

14 "Site" shall mean, for purposes of this Consent Decree, the Iron Mountain Mine  
15 Superfund Site, located in Shasta County, California, approximately 9 miles northwest of the  
16 City of Redding, California, including without limitation approximately 8,000 acres of land  
17 that includes the mining property on the topographic feature known as Iron Mountain, several  
18 inactive underground and open pit mines, numerous waste piles, abandoned mining and  
19 smelter facilities, abandoned transportation facilities (including without limitation rail sidings  
20 at Matheson and Keswick, the tramway from the Richmond mine to Matheson, and the former  
21 rail line from Keswick to the Iron Mountain mine), mine drainage treatment facilities, the  
22 downstream reaches of Boulder Creek, Slickrock Creek, and Spring Creek, the Spring Creek  
23 Reservoir, the Spring Creek Debris Dam, and Keswick Reservoir (collectively, the "Iron  
24 Mountain Mine Property"), together with all locations (including without limitation any  
25 locations in or beyond the Sacramento River) where Waste Materials from the Iron Mountain  
26 Mine Property have spread or migrated by surface water, groundwater, air dispersion, or other  
27

1 medium. The Site also includes the Land as defined in Paragraph 6.E. The Iron Mountain  
2 Mine Property and surrounding portions of the Sacramento River watershed are generally  
3 depicted on the map attached hereto as Appendix F.

4 "Site Operator" shall mean IT Iron Mountain Operations LLC, a Delaware limited  
5 liability corporation, and any successor thereto selected in accordance with the terms of this  
6 Consent Decree and the SOW. "Site Operator" also includes IT or AISLIC to the extent that  
7 IT or AISLIC acts as Site Operator under this Consent Decree. In the event that the Policy is  
8 canceled as to the Site Operator under Section VI, Paragraph G.4 of the Policy, prior to the  
9 Effective Date of the Consent Decree, then AISLIC shall be obliged to secure a replacement  
10 Site Operator acceptable to the United States and the State agencies, as provided in the Policy.  
11 Until such a replacement Site Operator is approved by the United States and the State  
12 agencies, AISLIC will be the Site Operator under this Consent Decree and the SOW.

13 "SLC" shall mean the State Lands Commission and any predecessor and successor  
14 agency, officials and employees, provided and to the extent that any such individuals were  
15 acting within the scope of their duties and in their capacity as officials or employees.

16 "SOW Response Costs" means those costs defined in Paragraph 34 of Section 2 of the  
17 Statement of Work.

18 "State" shall mean the State of California and all of its agencies, officials and  
19 employees, provided and to the extent that any such individuals were acting within the scope  
20 of their duties and in their capacity as officials or employees.

21 "The State agencies" shall mean DTSC, the CHSA, the CHSCF, the CTSCA, the  
22 CVRWQCB, DFG, the SWRCB, and the SLC.

23 "The State plaintiffs" shall mean DTSC and the CVRWQCB.

24 "Statement of Work" or "SOW" shall mean the statement of work for implementation  
25 of activities at the Site, as set forth in Appendix E to this Consent Decree, and any  
26 modifications thereto made in accordance with this Consent Decree and the SOW.

1 "Support Agency" means the agency or agencies of the United States or the State of  
2 California that support the activities of the Oversight Agency in accordance with the NCP.

3 "SWRCB" shall mean the State Water Resources Control Board and any predecessor  
4 and successor agency, officials and employees, provided and to the extent that any such  
5 individuals were acting within the scope of their duties and in their capacity as officials or  
6 employees.

7 "Trust I" means the Iron Mountain Mine Remediation Trust I, established pursuant to,  
8 and governed by, the laws of the State of California and established to qualify as a trust  
9 established pursuant to Section 468B of the United States Internal Revenue Code, which shall  
10 hold certain rights, title, and other interests with respect to certain plant and fixed equipment  
11 at the Site.

12 "Trust II" means the Iron Mountain Mine Remediation Trust II established pursuant to,  
13 and governed by, the laws of the State of California and established to qualify as a trust  
14 established pursuant to Section 468B of the United States Internal Revenue Code.

15 "Trustee" means IT Administrative Services LLC, or any successor thereto selected in  
16 accordance with the terms of this Consent Decree, or Trust I or Trust II.

17 "United States" shall mean the United States of America and its departments and  
18 agencies.

19 "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of  
20 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of  
21 CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA,  
22 42 U.S.C. § 6903(27); and (4) any "hazardous waste," "hazardous substance," "hazardous  
23 material," "waste," "pollutant," "contaminant," "mining waste," "pollution," or  
24 "contamination" under California Health & Safety Code §§ 25117, 25260, and 25316,  
25 California Water Code § 13050, and any provision of the California Fish & Game Code.

26 "Work" shall mean all activities required to be performed by the Site Operator under  
27

1 this Consent Decree and the SOW, except those required by Section XXV (Retention of  
2 Records).

3 V. GENERAL PROVISIONS

4 5. Objectives of the Parties. The objectives of the Parties in entering into this  
5 Consent Decree are to protect public health or welfare or the environment at the Site, to effect  
6 a release of the claims of the United States and the State agencies against the Released Parties,  
7 as set forth in Section XXI of this Consent Decree (Covenants by the United States and the  
8 State agencies), and to effect a release of the claims of the Released Parties against the United  
9 States and the State agencies as set forth in Section XXII of this Consent Decree (Covenants by  
10 Settling Defendants), all as provided in this Consent Decree.

11 6. Payment and Other Obligations of the Settling Parties

12 The Settling Parties shall pay a total amount consisting of the payments set forth  
13 in Paragraphs 6.A and 6.B, below, which payment obligations, at the Plaintiffs' direction,  
14 shall be satisfied as follows:

15 A. (1) Not later than 30 days after the Effective Date of this Consent  
16 Decree, the Settling Parties shall pay the sum of \$18,718,091 (minus credits as set forth in  
17 Paragraph 6.A.(3), below) into an escrow account bearing interest on commercially reasonable  
18 terms, in a federally-chartered bank. Such monies shall remain in escrow and may not be  
19 withdrawn by the Settling Parties, unless the Consent Decree has been voided pursuant to  
20 Paragraph 110; in that event, all monies paid into escrow shall be returned to the Settling  
21 Parties together with accrued interest thereon. Within 15 days after the Date of Final  
22 Approval of this Decree, the Settling Parties shall cause the monies in escrow, together with  
23 accrued interest, to be paid as set forth below:

24 (a) \$8.0 million, together with accrued interest, shall be paid  
25 to the Department of the Interior, on behalf of the state and federal Natural Resource Trustees  
26 for the purposes set forth in Section XXXIII of this Consent Decree, by Electronic Funds  
27



1 Transfer ("EFT") in accordance with the "The Department of the Interior Natural Resource  
2 Damage Assessment and Restoration Fund Assessment and Settlement Deposit Remittance  
3 Procedures" attached as Appendix I, on behalf of the state and federal Natural Resource  
4 Trustees for the purposes set forth below. An additional payment of \$2 million, together with  
5 accrued interest, for Natural Resource Trustee past costs shall be paid to the Natural Resource  
6 Trustees, or into the Registry of the Court, in accordance with instructions to be submitted by  
7 the Natural Resource Trustees. If paid into the Registry of the Court, the monies shall  
8 disbursed from the Court Registry in accordance with instructions from the Natural Resource  
9 Trustees. Transmittal letters indicating that the EFT and escrow disbursements have occurred  
10 shall be sent to the Parties in accordance with Section XXVI (Notices and Submissions) and to:

11 Triscilla P. Taylor, Esq.  
12 Attorney Advisor  
13 Office of the Solicitor  
14 U.S. Department of the Interior  
15 Washington, D.C. 20240

14 and  
15 Bruce Nessler  
16 DOI Restoration Fund Manager  
17 1849 "C" Street, N.W.  
18 Mail Stop 4449  
19 Washington, D.C. 20240

17 The EFT and transmittal letter shall reflect that the payment is being made to the "Natural  
18 Resources Damage Assessment and Restoration Fund, Account No. 14X5198. The  
19 Department of the Interior will assign these funds a special project number to allow the funds  
20 to be maintained as a segregated account within the Department of the Interior Natural  
21 Resource Damage Assessment and Restoration Fund (the "Iron Mountain Mine NRD  
22 Account").

23 (b) The Department of the Interior shall, in accordance with  
24 law, manage and invest funds in the Iron Mountain Mine NRD Account and any return on  
25 investments or interest accrued on the Account for use by the Natural Resource Trustees in  
26

1 connection with restoration of natural resources impacted by releases of hazardous substances  
2 at or from the Site. The Department of the Interior shall not make any charge against the Iron  
3 Mountain Mine NRD Account for any investment or management services provided.

4 (c) The Department of the Interior shall hold all funds in the  
5 Iron Mountain Mine NRD Account, including return on investments or accrued interest,  
6 subject to the provisions of this Decree and any memorandum of understanding entered into by  
7 the Natural Resource Trustees.

8 (2) The remainder of the funds contained in the escrow account,  
9 together with accrued interest shall be paid into in the Iron Mountain Mine Superfund Site  
10 Special Account, by Electronic Funds Transfer ("EFT") in accordance with instructions to be  
11 provided to the Settling Parties by EPA following lodging of this Decree.

12 (3) Credits against the monies to be paid pursuant to this Paragraph  
13 6.A may be deducted, prior to payment into escrow, for the following:

14 (a) \$685,000 for upgrades to the Minnesota Flats Treatment  
15 Plant, and

16 (b) \$90,000 for costs incurred for installing cathodic  
17 protection on the thickener (provided that the Settling Parties have actually paid that amount).

18 B. Not later than 30 days after the Effective Date of this Consent Decree,  
19 the Settling Parties shall pay to Trust II, the qualified settlement fund established pursuant to  
20 Internal Revenue Code § 468B, the amount necessary to fully fund the Iron Mountain Mine  
21 Manuscript Clean-Up Cost Cap - Pollution Legal Liability Select Insurance Policy issued by  
22 American International Specialty Lines Insurance Company ("AISLIC") and attached hereto as  
23 Appendix J ("Policy"). The amount necessary to fully fund the Policy is the Policy Premium,  
24 plus the Terminal Payment Deposit, plus the Site Operator Deposit of \$2,711,000 million, all  
25 as specified pursuant to the Policy and Endorsements 3 and 4 of the Policy. The estimated  
26 amount necessary to fully fund the Policy, based on designated interest rates in effect as

1 specified in Endorsements 3 and 4 of the Policy, is \$141,901,277. The actual amount  
2 necessary to fully fund the Policy may be higher or lower than this estimated amount, since the  
3 Policy Premium and Terminal Payment Deposit will be calculated from designated interest  
4 rates, as described in Endorsements 3 and 4 of the Policy. The Settling Parties shall notify the  
5 Trustee of the actual amount required to fully fund the Policy at the time of payment of that  
6 amount into Trust II. The Settling Parties have the option to pay the Policy Premium into  
7 escrow with AISLIC before or within 30 days after the Effective Date of the Consent Decree  
8 in order to lock in prevailing rates and, in that event, AISLIC as escrow agent shall transfer  
9 the Policy Premium into Trust II on the same day and at the same time that the Settling Parties  
10 pay the Terminal Payment Deposit into Trust II, but in no event shall such payment or transfer  
11 be made more than 30 days after the Effective Date of the Consent Decree

12 (1) The requirements of this subparagraph apply immediately upon  
13 payment to Trust II by the Settling Parties (or AISLIC) of the amount required to fully fund  
14 the Policy.

15 (a) ITX shall ensure that Trust II pays the amounts specified  
16 for the Policy coverages in this Subparagraph, as required by the Iron Mountain Mine  
17 Remediation Trust Agreement II, attached hereto as Appendix K.

18 (b) Trust II shall immediately use such funds to cause to be  
19 paid to AISLIC the Policy Premium and the Terminal Payment Deposit and shall also pay  
20 \$2,711,000 to the Site Operator (representing the Site Operator Deposit to be used to fund a  
21 portion of the Site Operator's co-insurance participation and other obligations under the Policy  
22 and SOW). However, if the Policy is canceled as to the Site Operator under Section VI,  
23 Paragraph G.4 of the Policy, Trust II shall pay the Site Operator Deposit to AISLIC as  
24 premium.

25 (2) The Policy will provide the necessary funding to defray the cost  
26 of activities conducted by the Site Operator under the oversight of the Oversight Agency and  
27

1 Support Agency pursuant to this Consent Decree and the SOW and other Site costs. The  
2 Policy shall, among other things, guarantee to EPA and the State plaintiffs that the funds  
3 required to complete the Work to be undertaken pursuant to this Consent Decree and the SOW  
4 by the Site Operator are secured up to the limits provided in the Policy, totaling \$301,706,450  
5 (THREE HUNDRED AND ONE MILLION, SEVEN HUNDRED AND SIX THOUSAND,  
6 FOUR HUNDRED AND FIFTY DOLLARS), for a term of at least 30 years, subject to the  
7 terms and conditions of the Policy. In addition, the Policy shall provide for payment of a  
8 Terminal Payment (as defined and provided for therein) at the end of the Policy period.  
9 AISLIC shall be responsible to pay all of the costs and expenses of the Site Operator under the  
10 Consent Decree and the SOW, and in the event of a work takeover by the government, the  
11 government costs associated with the work takeover, up to the Policy limits and subject to the  
12 terms and conditions of the Policy.

13 (3) The Settling Parties shall have no rights in the Policy or control  
14 over the Policy after its issue, except for the right to a refund under the formula specified  
15 within the Policy should the Decree be vacated after entry as set forth in Paragraph 110.

16 (4) The terms of the Policy shall control to the extent of any  
17 inconsistency between such terms and the description of such terms provided in Paragraph  
18 6.B.(2).

19 C. In the event that the payments by the Settling Parties required by  
20 Paragraphs 6.A and 6.B are not made within 30 days of the Effective Date, the Settling Parties  
21 shall pay Interest on the unpaid balance. The Interest to be paid on the amounts due under  
22 Paragraphs 6.A and 6.B shall begin to accrue 30 days after the Effective Date. The Interest  
23 shall accrue through the date of the Settling Parties' payment. Payments of Interest made  
24 under this Paragraph shall be in addition to such other remedies or sanctions available to  
25 Plaintiffs by virtue of Settling Parties' failure to make timely payments under this Section.  
26 The Settling Parties shall make all payments required by this Paragraph in the manner

1 described in Paragraphs 6.A and 6.B.

2 D. The Settling Parties shall send copies of all correspondence and other  
3 evidence of any transmittal of funds under this Paragraph to the Plaintiffs as specified in  
4 Section XXVI (Notices and Submissions).

5 E. Upon the Date of Final Approval of this Consent Decree, Atkemix  
6 Thirty-Seven Inc. ("Atkemix Thirty-Seven") hereby grants to the United States, through the  
7 United States Bureau of Land Management ("BLM"), an option (the "Option") to acquire  
8 Atkemix Thirty-Seven's interest in certain parcels of land located in the area of Iron Mountain  
9 under the authority and provisions of Section 107(f)(1) of CERCLA, 42 U.S.C.  
10 Section 9607(f)(1), and Section 205 of the Federal Land Policy and Management Act,  
11 43 U.S.C. Section 1715, and 43 C.F.R. Part 11. The parcels subject to the Option (the  
12 "Land") encompass approximately 1,250 acres of land. The Land is generally depicted as the  
13 shaded areas on the map attached to this Consent Decree as Appendix L; however, the parcel  
14 boundaries and other notations appearing on Appendix L are not meant to constitute  
15 controlling legal descriptions. The terms of the Option, and of the United States' exercise  
16 thereof, are as follows:

17 (1) Transfer from Atkemix Thirty-Seven to the United States of  
18 Atkemix Thirty-Seven's interest the Land, in its entirety or any parcel therein, shall be in  
19 consideration of agreements contained in this Consent Decree and shall not require any further  
20 consideration. Restoration efforts undertaken on any Land the United States acquires under  
21 this Paragraph will be developed by the Natural Resource Trustees in accordance with Section  
22 XXXIII of this Consent Decree and funded from allocations made pursuant to Paragraphs  
23 6.A.(1)(a) and 7.D of this Consent Decree.

24 (2) The term of the Option (the "Option Term") shall be a period of  
25 24 months from the Date of Final Approval of this Consent Decree. The United States may  
26 exercise its right to acquire Atkemix Thirty-Seven's interest in the Land or any parcel therein

1 during the Option Term. The United States may also, at its sole discretion, decline to exercise  
2 its right to acquire Atkemix Thirty-Seven's interest in the Land or any parcel therein during  
3 the Option Term.

4 (3) During the Option Term, Atkemix Thirty-Seven shall grant to the  
5 United States, or its representatives, access at reasonable times to any portion of the Land and  
6 any information pertaining to the Land for the purpose of inspecting the Land, complying with  
7 the United States Department of the Interior's acquisition policies, including 602 Departmental  
8 Manual, Chapter 2, and conducting other due diligence.

9 (4) The United States' decision to exercise or decline to exercise the  
10 Option shall be expressed by written communication of the BLM Director or his designee to  
11 Atkemix Thirty-Seven (the "Exercise Notice"). The Exercise Notice shall be sent by certified  
12 mail no later than the last day of the 24th month following the Date of Final Approval of this  
13 Consent Decree.

14 (5) Within 30 days of the date of receipt by Atkemix Thirty-Seven of  
15 the Exercise Notice, Atkemix Thirty-Seven shall furnish the BLM Director or his designee, by  
16 certified mail, a proposed conveyance in the form of a grant deed (as provided for under State  
17 of California law). The BLM Director or his designee shall determine whether to accept the  
18 proposed conveyance within 60 days of receipt.

19 (6) If the United States exercises the Option with respect to the Land  
20 or any parcel therein during the Option Term, Atkemix Thirty-Seven shall, within 30 days of  
21 the date of BLM's acceptance of the proposed conveyance, deliver to Escrow Holder, as  
22 defined below, an executed and notarized grant deed (the "Deed").

23 (7) The conveyance to the United States shall be consummated  
24 through an escrow with an escrow holder to be agreed upon by the Atkemix Thirty-Seven and  
25 the BLM Director or his designee ("Escrow Holder"). The escrow shall be opened within five  
26 days after the Exercise Notice has been given to Atkemix Thirty-Seven. The Deed shall be  
27

1 recorded within five business days after delivery of the approved Deed to the Escrow Holder.

2 Escrow shall be deemed to be closed on the date the Deed is recorded.

3 (8) Rent, taxes, and other items of income and expenses shall be  
4 prorated as of the close of escrow.

5 (9) The United States shall pay the charges of Escrow Holder,  
6 including recording fees and other fees and costs necessary to close escrow, together with the  
7 cost of obtaining title insurance, if applicable.

8 F. The Settling Parties, upon the Effective Date of this Consent Decree,  
9 hereby transfer all right, title and interest they may have in any plant and fixed equipment at  
10 the Site to Trust I, in accordance with the terms of the Iron Mountain Mine Remediation Trust  
11 Agreement I, attached hereto as Appendix N. Said transfer is on an "as is" basis and without  
12 warranty of any sort. The Settling Parties also convey to Trust I as of the Effective Date an  
13 assignment of any warranty rights they may have from third parties with respect to the plant  
14 and equipment.

15 7. Within 30 days of the Effective Date of this Consent Decree, insurers for the  
16 State agencies, Pacific Indemnity Company, Underwriters at Lloyd's (by their agent Equitas  
17 Limited) and Company Market Insurers, shall pay, on behalf of the State agencies, \$8 million  
18 (EIGHT MILLION DOLLARS) collectively into an escrow account bearing interest on  
19 commercially reasonable terms, in a federally-chartered bank. Such monies shall remain in  
20 escrow and may not be withdrawn by the State agencies, unless the Consent Decree has been  
21 voided pursuant to Paragraph 110; in that event, all monies paid into escrow shall be returned  
22 to the State agencies' insurers identified above, together with accrued interest thereon. Within  
23 15 days after the Date of Final Approval of this Consent Decree, the State agencies shall cause  
24 those funds, together with accrued interest, to be paid as follows:

25 A. \$5.0 million, together with accrued interest, to the Site Operator to  
26 implement the Remedial Action associated with the mine working upgrades as set forth in

1 Section 9.9.2.2(5)(a) of the SOW, provided that the Policy has not been canceled as to the  
2 Site Operator under Section VI, Paragraph G.4 of the Policy. Such monies shall be paid to the  
3 Site Operator only after the Site Operator meets the financial assurance requirements for such  
4 work as set forth in the SOW. In the event that the Policy is canceled as to the Site Operator  
5 under Section VI, Paragraph G.4 of the Policy, \$5.0 million (together with accrued interest)  
6 shall be instead paid as premium to AISLIC, which shall arrange for performance of the work  
7 described in this Subparagraph, in accordance with the terms and conditions of the Policy and  
8 the SOW. EPA agrees that the monies paid under this Subparagraph to the Site Operator or to  
9 AISLIC for performance of the Remedial Action associated with the mine working upgrades  
10 are reasonable, documented, direct, extra-mural, out-of-pocket expenditures of non-Federal  
11 funds that have not been previously applied or reimbursed and shall be available to the State  
12 for use as a credit against cost-share commitments under the State Superfund Contract in  
13 connection with the Slickrock Creek Remedial Action, as amended to reflect the availability of  
14 the credit as provided under this Subparagraph, and any future State Superfund Contracts for  
15 the Site.

16 B. \$1 million, together with accrued interest, to DTSC. The monies paid  
17 under this Subparagraph shall be paid to DTSC, along with a transmittal letter identifying the  
18 Iron Mountain Mine project Code (Project Code 100077) to:

19 DTSC  
20 Accounting Unit  
21 P.O. Box 806  
22 Sacramento, CA 95812-0806  
23 Project Code 100077

24 C. \$1 million, together with accrued interest, to the CVRWQCB for  
25 payment into a special account for use in connection with the Site pursuant to instructions to  
26 be provided by the CVRWQCB; and

27 D. \$1 million, together with accrued interest, for payment into the DOI  
28 fund described in Paragraph 6.A.(1)(a), above.



1           8.     Commitments by the Site Operator and AISLIC

2           A.     Performance of the Work. The Site Operator shall perform activities in  
3 accordance with this Consent Decree and the SOW, and all work plans and other plans,  
4 standards, specifications, and schedules set forth therein or as modified in accordance with the  
5 SOW, commencing on the date of purchase of the Policy. Upon the Effective Date of this  
6 Consent Decree, the Site Operator shall arrange for the orderly assumption of its obligations  
7 under the SOW and this Consent Decree in a manner that ensures the continuous operation of  
8 the Treatment Plant and related facilities during the period between the termination of the  
9 Settling Parties' obligations under Paragraph 118 of this Consent Decree and the start of the  
10 Site Operator's performance under the SOW. If the Consent Decree is not approved and  
11 entered by the Court, or if its approval and entry is subsequently vacated on appeal of such  
12 approval and entry, the Site Operator shall have no obligations under this Consent Decree or  
13 the SOW, unless the Parties otherwise agree.

14           B.     Obligations of IT and ITX. IT and ITX shall be jointly and severally  
15 liable with the Site Operator. IT or, as appropriate, ITX shall take all steps necessary to cause  
16 the Site Operator to:

17                     (1)     post, provide, and maintain in effect the financial assurances  
18 referenced in Section 7.13 of the SOW;

19                     (2)     post, provide, and maintain in effect the insurance coverages  
20 referenced in Section 5.1 and 5.2 of the SOW; and

21                     (3)     meet the Performance Standards and other requirements of the  
22 SOW and otherwise perform the Work as set forth in the SOW.

23 In the event that the Oversight Agency deems it necessary to seek performance by IT or ITX  
24 of their obligations under this Paragraph, it may notify IT and ITX to require them to take all  
25 steps necessary to cause the Site Operator to perform as provided immediately above and shall  
26 send such notice to IT, ITX, and AISLIC at the same time it provides notice to the Site

1 Operator.

2 C. Obligations of AISLIC. Upon the payment provided for in Paragraph  
3 6.B, AISLIC shall issue the Policy and shall make payments and perform other obligations as  
4 provided in that document. In the event that AISLIC does not fulfill its obligations under the  
5 Policy and this Consent Decree, IT, ITX, or the Site Operator may request that the Oversight  
6 Agency seek appropriate relief from the Court and any other appropriate sanctions and  
7 remedies. In the event that AISLIC fails to issue the Policy, make the initial payments, and  
8 perform the other obligations required at the inception of the Policy as required under the  
9 terms of this Consent Decree, the Site Operator's obligations shall be stayed pending action to  
10 enforce AISLIC's obligations under the terms of the Policy and this Consent Decree and  
11 pending Court resolution of such action. During any period of time that the Site Operator's  
12 obligations are stayed in accordance with the preceding sentence, the Oversight Agency may  
13 perform the Work otherwise required to be performed by the Site Operator under the SOW  
14 (except for the short-term upgrades specified in Endorsements 3 and 3A of the Policy) and this  
15 Consent Decree, and AISLIC shall reimburse the Oversight Agency for all response costs  
16 incurred in performing such work, pursuant to the provisions of Paragraph 35 of this Consent  
17 Decree..

18 9. Compliance With Applicable Law. The Site Operator shall comply with all  
19 applicable federal and state laws as provided in the SOW. The activities conducted pursuant to  
20 this Consent Decree, if approved by the Oversight Agency, shall be considered to be  
21 consistent with the NCP.

22 10. Permits

23 A. As provided in Section 121(e) of CERCLA and Section 300.400(e) of  
24 the NCP, no permit shall be required for any response actions conducted entirely on-site (i.e.,  
25 within the areal extent of contamination and all suitable areas in very close proximity to the  
26 contamination and necessary for implementation of such response actions) where such action is  
27

1 selected and carried out in accordance with CERCLA Section 121. Where any activity that is  
2 not on-Site (as defined in the SOW) requires a federal or state permit or approval, the Site  
3 Operator shall submit timely and complete applications and take all other actions necessary to  
4 obtain all such permits or approvals.

5 B. The Site Operator may seek relief under the provisions of Section XVIII  
6 (Force Majeure) of this Consent Decree for any delay in the performance of activities resulting  
7 from a failure to obtain, or a delay in obtaining, any permit required for such activities.

8 C. This Consent Decree is not, and shall not be construed to be, a permit  
9 issued pursuant to any federal or state statute or regulation.

10 11. Notice to Successors-in-Title. As set forth in the SOW, the Site Operator shall  
11 provide notice to successors-in-title to any property interest acquired by the Site Operator in  
12 the Site.

13 12. Inconsistency Between Consent Decree and SOW. If there is any inconsistency  
14 between this Consent Decree and the SOW, or between the Consent Decree and the Policy, the  
15 terms and provisions of this Consent Decree shall govern, except that (1) the definition of  
16 "Site" contained in the SOW shall govern the Site Operator's obligations under the SOW, and  
17 (2) the terms of the Policy shall control to the extent of any inconsistency between such terms  
18 and the description of such terms provided in Paragraph 6.B.(2) of this Consent Decree.

19 13. United States - State Relationship. The relationship between the United States  
20 and the State regarding this Consent Decree and oversight and support of the Work by the Site  
21 Operator shall be governed by the Memorandum of Understanding Regarding The Iron  
22 Mountain Mine Superfund Site Between The United States Environmental Protection Agency  
23 and The California Department of Toxic Substances Control and The California Central Valley  
24 Regional Water Quality Control Board ("MOU"), attached hereto as Appendix H.

25 A. Oversight and Support Agencies. EPA shall serve as the Oversight  
26 Agency, and the State plaintiffs shall designate the State agency(ies) that will serve as the  
27

1 Support Agency unless and until EPA and the State plaintiffs modify this relationship as set  
2 forth in the MOU.

3 B. Future Site Activities. The United States and the State plaintiffs  
4 understand that, 30 years and one day after the Policy is funded pursuant to the terms of this  
5 Consent Decree, AISLIC shall make a payment ("Terminal Payment"), pursuant to  
6 Endorsement 4 of the Policy. The United States and the State plaintiffs further understand that  
7 the Policy provides for a Notional Commutation Account from which certain funds may be  
8 available for disbursement to the Plaintiffs upon commutation of the Policy in the 31<sup>st</sup> year  
9 following the Effective Date of this Consent Decree. Subject to further agreement of the  
10 United States and the State in accordance with Paragraph 3.1.2 of the MOU, or to resolution  
11 by the Court as necessary pursuant to Paragraph 3.1.2 of the MOU, the Terminal Payment and  
12 any funds payable to the Plaintiffs from the Notional Commutation Account shall be paid into  
13 the federal Iron Mountain Mine Superfund Site Special Account, appropriate State account, or  
14 other appropriate account, or shall be otherwise retained for the purposes set forth below.  
15 Subject to further agreement of the United States and the State in accordance with the terms of  
16 the MOU, the Terminal Payment and any monies available to the Plaintiffs from the Notional  
17 Commutation Account shall be used for the following purposes in the following order of  
18 priority:

19 (1) First, payment of the costs of continued performance of the Work  
20 as defined in this Consent Decree and other actions in connection with operation and  
21 maintenance of the remedies selected in RODs 1-4, by the Oversight Agency, Support  
22 Agency, or other entity, for as long as necessary beyond the term set forth in the SOW;

23 (2) Second, and only to the extent that the costs of Item (1), above,  
24 are able to be fully defrayed, payment of the costs of additional response actions at the Site,  
25 not coming within the scope of Item (1), above; and

26 (3) Third, and only to the extent that the costs of Items (1) and (2).

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  
27



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  
27

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



1 maintenance activities necessary to assure meeting Performance Standards during elevated flow  
2 conditions);

3 (c) Failure to comply with the requirements for sediment  
4 controls. (SOW Sections 8.11.1(2); 8.11.2(2); 8.11.3(2); 8.11.4(2); 8.13(8), and 8.13(9)); or

5 (d) Failure to comply with the Surface Water Control  
6 requirements (SOW Sections 8.5.2(1); 8.8(3); 8.11.4(1); 8.14(2); 8.17(2); 9.5.2(1), 9.5.2(2);  
7 9.7.2(5), 9.7.2(7); 9.10.5.2; 9.12.2; and 9.13.2).

8 (2) Stipulated Penalty Calculations

9 Period of Non-Compliance	Daily Stipulated Penalty Amount
10 Starting on the occurrence of the non- 11 compliance, 1 <sup>st</sup> through 5 <sup>th</sup> day	\$5,000
12 After 5 <sup>th</sup> day of non-compliance, 5 <sup>th</sup> day 13 through 20 <sup>th</sup> day after written notice of 14 non-compliance is sent to the Site Operator	\$7,500
15 After 21 <sup>st</sup> day and beyond after written 16 notice is sent of non-compliance is sent to 17 the Site Operator	\$10,000

18 (3) To the extent that Stipulated Penalties/Damages in this subsection  
19 are triggered by written notice, the Stipulated Penalties/Damages will not be assessed if the  
20 Site Operator rectifies the failure within 5 calendar days of the notice of non-compliance.

21 D. Failure to Comply with other Requirements of the SOW or Consent  
22 Decree

23 (1) Trigger: Any failure to comply with an approved workplan or  
24 any other requirement contained in Section 4 through 14 of the SOW or this Consent Decree,  
25 except those referenced in Subparagraphs A through C, above.

1 (2) Stipulated Penalty Calculations: Stipulated Penalties/Damages  
2 for these failures commence on the 5<sup>th</sup> calendar day after written notice is sent to the Site  
3 Operator of a failure to comply with requirements, or following such longer period as  
4 specified by the Oversight Agency in its sole discretion. Stipulated Penalties/Damages will not  
5 be assessed if the failure is rectified within the 5 working day period, or such longer period as  
6 determined by the Oversight Agency in its sole discretion. If it is not, Stipulated  
7 Penalties/Damages are assessed as follows:

8 Period of Non-Compliance (Days start 9 after expiration of 5 calendar day period.)	Daily Stipulated Penalty Amount
10 1 <sup>st</sup> through 14 <sup>th</sup> day	\$2,000
11 15 <sup>th</sup> through 30 <sup>th</sup> day	\$5,000
12 31 <sup>st</sup> day and beyond	\$10,000

13 56. In the event that the Oversight Agency takes over all or a portion of the  
14 performance of activities otherwise required to be performed by the Site Operator under this  
15 Consent Decree and the SOW, the Site Operator shall be liable for reimbursement of SOW  
16 Response Costs to the Oversight Agency as specified in the SOW.

17 57. Unless otherwise specified in the Consent Decree or the SOW, all Stipulated  
18 Penalties/Damages shall begin to accrue on the day after the complete performance is due or  
19 the day a violation occurs, and shall continue to accrue through the final day of the correction  
20 of the noncompliance or completion of the activity. However, Stipulated Penalties/Damages  
21 shall not accrue: (1) with respect to a deficient submission under Section XI (Oversight  
22 Agency Approval of Plans and Other Submissions), during the period, if any, beginning on the  
23 31st day after the Oversight Agency's receipt of such submission until the date that the  
24 Oversight Agency notifies the Site Operator of any deficiency; (2) with respect to a decision  
25 by the Oversight Agency, under Paragraph 45.A of Section XIX (Dispute Resolution), during  
26 the period, if any, beginning on the 21st day after the date that the Site Operator's reply to the  
27 Oversight Agency's Statement of Position is received until the date that the Oversight Agency

1 issues a final decision regarding such dispute; (3) with respect to judicial review by this Court  
2 of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning  
3 on the 31st day after the Court's receipt of the final submission regarding the dispute until the  
4 date that the Court issues a final decision regarding such dispute or (4) with respect to work  
5 taken over by the Oversight Agency, after the Site Operator receives notice that the Oversight  
6 Agency is taking over that portion of work pursuant to the Work Takeover provisions of the  
7 SOW. Nothing herein shall prevent the simultaneous accrual of separate damages for separate  
8 violations of this Consent Decree or the SOW.

9       58. Following the Oversight Agency's determination that the Site Operator has  
10 failed to comply with a requirement of this Consent Decree, the Oversight Agency may give  
11 the Site Operator written notification of the same and describe the noncompliance. The  
12 Oversight Agency may send the Site Operator a written demand for the payment of Stipulated  
13 Penalties/Damages. However, unless otherwise specified in this Consent Decree or the SOW,  
14 Stipulated Penalties/Damages shall accrue as provided in the preceding Paragraph regardless of  
15 whether the Oversight Agency has notified the Site Operator of a violation. Except with  
16 respect to Stipulated Penalties/Damages that may be assessed under Paragraph 55.B, notwith-  
17 standing any other provision of this Consent Decree or the SOW, in all cases where the Site  
18 Operator obtains actual knowledge of a violation and does not provide timely notice of such  
19 violation to the Oversight Agency, Stipulated Penalties/Damages shall accrue as of the first  
20 date of violation and the requirement that the Oversight Agency provide notice and an  
21 opportunity to cure shall not apply, but the Site Operator shall nevertheless be entitled to any  
22 opportunity to cure provided in Paragraph 55.B of this Consent Decree.

23       59. All Stipulated Penalties/Damages accruing under this Section shall be due and  
24 payable to the Oversight Agency within 30 days of the Site Operator's receipt from the  
25 Oversight Agency of a demand for payment of the Stipulated Penalties/Damages, unless the  
26 Site Operator invokes the Dispute Resolution procedures under Section XIX (Dispute  
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1 Resolution). All payments to the Oversight Agency under this Section shall be paid in  
2 accordance with the same procedures as set forth in Paragraph 48 for the Settling Parties, if  
3 the Oversight Agency is EPA, or into the appropriate State account, upon instructions by the  
4 State plaintiffs, if the State plaintiffs are acting as Oversight Agency or if they impose  
5 Stipulated Penalties/Damages as provided in Paragraph 68.

6 60. All Stipulated Penalties/Damages provided for in the schedules set out in this  
7 Section shall be adjusted annually for inflation, according to the Consumer Price Index for all  
8 Urban Consumers (CPI-U) published by the Department of Labor, Bureau of Statistics, to  
9 reflect payment in September 2000 dollars. If the CPI-U ceases to exist, an appropriate  
10 analogue will be used for this purpose.

11 61. The payment of Stipulated Penalties/Damages shall not alter in any way the Site  
12 Operator's obligation to complete the performance of the activities required under this Consent  
13 Decree.

14 62. Stipulated Penalties/Damages shall continue to accrue as provided in Paragraph  
15 57 during any dispute resolution period, but need not be paid until the following:

16 A. If the dispute is resolved by agreement or by a decision of the Oversight  
17 Agency that is not appealed to this Court, accrued Stipulated Penalties/Damages determined to  
18 be owing shall be paid to the Oversight Agency within 15 days of the agreement or the receipt  
19 of the Oversight Agency's decision or order;

20 B. If the dispute is appealed to this Court and the Oversight Agency  
21 prevails in whole or in part, the Site Operator shall pay all accrued Stipulated  
22 Penalties/Damages determined by the Court to be owed to the Oversight Agency within 60  
23 days of receipt of the Court's decision or order, except as provided in Paragraph C below;

24 C. If the District Court's decision is appealed by either party to the dispute,  
25 the Site Operator shall pay all accrued Stipulated Penalties/Damages determined by the District  
26 Court to be owing to the Oversight Agency into an interest-bearing escrow account within 60

1 days of receipt of the Court's decision or order. Stipulated Penalties/Damages shall be paid  
2 into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt  
3 of the final appellate court decision, the escrow agent shall be directed to pay the balance of  
4 the account to the Oversight Agency or to the Site Operator to the extent that each has  
5 prevailed.

6 63. If the Site Operator fails to pay Stipulated Penalties/Damages when due, the  
7 Oversight Agency may institute proceedings to collect the damages, as well as Interest. The  
8 Site Operator shall pay Interest on the unpaid balance, which shall begin to accrue on the date  
9 of demand made pursuant to Paragraph 59.

10 64. Subject to the covenants and reservations contained in Paragraphs 73, 74, and  
11 75 of this Consent Decree, the United States and the State agencies reserve their rights to seek  
12 such remedies or sanctions as are available under applicable state or federal laws for the Site  
13 Operator's violation of this Consent Decree. Stipulated Penalties/Damages shall be the  
14 exclusive monetary remedy for violations by the Site Operator of the requirements of the  
15 Work, as set forth in the schedules contained in Paragraph 55 of this Consent Decree, and that  
16 arise from conduct that is not negligent, grossly negligent, or does not constitute intentional  
17 misconduct. As to any such violation for which the Oversight Agency or the Support Agency  
18 in its discretion elects to seek Stipulated Penalties/Damages and Stipulated Penalties/Damages  
19 are paid (or determined through Dispute Resolution not to be owing), neither the Oversight  
20 Agency nor the Support Agency shall seek other available monetary remedies or sanctions for  
21 such violations as to which it has sought Stipulated Penalties/Damages. In the event that the  
22 United States or the State agencies elect to pursue other available remedies or sanctions for  
23 conduct of the Site Operator that is negligent, grossly negligent, or that constitutes intentional  
24 misconduct, neither the Oversight Agency nor the Support Agency will seek Stipulated  
25 Penalties/Damages for violations for which it is pursuing such other remedies or sanctions.  
26 Subject to Paragraph 80, the Site Operator preserves any claims and defenses as to such

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1 actions by the United States or the State agencies for other available remedies or sanctions.  
2 Election by the Oversight Agency or the Support Agency as between Stipulated  
3 Penalties/Damages or other available remedies and sanctions for violations arising from  
4 conduct by the Site Operator that is negligent, grossly negligent, or that constitutes intentional  
5 misconduct shall not be subject to judicial review.

6 65. Coordination between the Oversight Agency and the Support Agency. The  
7 Oversight Agency and the Support Agency shall coordinate concerning enforcement of this  
8 Consent Decree as provided in the MOU. In accordance with the MOU, the following  
9 provisions apply:

10 A. As to violations arising from conduct that is not negligent, grossly  
11 negligent, or that does not constitute intentional misconduct: the Support Agency will not  
12 bring an enforcement action for Stipulated Penalties/Damages if the Oversight Agency pursues  
13 an enforcement action for Stipulated Penalties/Damages for the violation. If the Oversight  
14 Agency elects not to pursue an enforcement action, the Support Agency may bring an action  
15 for Stipulated Penalties/Damages only after complying with the procedures set forth in the  
16 MOU.

17 B. Violations based on negligence that do not result in a release to waters of  
18 the State or United States: the Support Agency and the State agencies that are serving as  
19 neither the Oversight Agency nor the Support Agency may not bring an enforcement action for  
20 Stipulated Penalties/Damages or other monetary sanctions if the Oversight Agency takes an  
21 enforcement action for Stipulated Penalties/Damages or other monetary sanctions. If the  
22 Oversight Agency elects not to pursue an enforcement action, the Support Agency and the  
23 State agencies that are serving as neither the Oversight Agency nor the Support Agency may  
24 bring an action for Stipulated Penalties/Damages or other monetary sanctions only after  
25 complying with the procedures set forth in the MOU. The Support Agency and the State  
26 agencies that are serving as neither the Oversight Agency nor the Support Agency may bring

1 an action for injunctive relief in a manner consistent with CERCLA and the SOW, whether or  
2 not the Oversight Agency has brought an enforcement action for the violation.

3 C. For all other violations: EPA and the State agencies reserve their rights  
4 to bring enforcement actions, as provided in this Consent Decree.

5 66. If the Oversight Agency determines that the Site Operator:

6 A. used best efforts to anticipate and prevent the trigger of the event giving  
7 rise to Stipulated Penalties/Damages, and

8 B. used best efforts to respond to the noncompliance and minimize the  
9 duration of the noncompliance,

10 then the Oversight Agency will not, absent unusual circumstances, impose Stipulated  
11 Penalties/Damages to the extent that either:

12 C. the noncompliance results from a design failure of equipment or facilities  
13 designed, constructed, or installed by the Site Operator or its agents and the design was  
14 reasonably calculated to achieve the Performance Standards or other requirements of the SOW  
15 in a highly reliable manner, or

16 D. the noncompliance results from a design or construction failure of  
17 equipment or facilities designed, constructed, or installed by an entity other than the Site  
18 Operator or its agents and the design, construction, or installation defect was latent and not  
19 discoverable by the Site Operator or its agents through reasonable means.

20 Factors to consider in whether the design was reasonably calculated to achieve the  
21 Performance Standards and other requirements of the SOW in a highly reliable manner include  
22 whether the design was approved by the Oversight Agency without reservation, whether the  
23 Site Operator diligently implemented the design as approved, whether the design utilized best  
24 engineering practices, and other relevant factors.

25 67. The Oversight Agency may not impose Stipulated Penalties/Damages for a  
26 particular noncompliance with the Consent Decree or SOW if the Oversight Agency has not

1 provided notice of the noncompliance within 365 calendar days of actual notice or actual  
2 knowledge of the noncompliance, unless such period is extended by mutual consent. Where  
3 notice of noncompliance is provided within 365 days (or such other period as is agreed upon)  
4 of any instance of noncompliance of a continuing nature, Stipulated Penalties/Damages may be  
5 imposed for the entire period of noncompliance, including any period of noncompliance  
6 outside the applicable notice period, subject to the specific provisions of Paragraphs 55.B,  
7 55.C, and 55.D of this Consent Decree.

8 68. Notwithstanding any other provision of this Section, the Oversight Agency may,  
9 in its unreviewable discretion, waive any portion of Stipulated Penalties/Damages that have  
10 accrued pursuant to this Consent Decree. In deciding whether to waive Stipulated  
11 Penalties/Damages, the Oversight Agency may consider, among other factors, the overall  
12 efforts taken by the Site Operator to prevent and minimize the duration and impact of the  
13 trigger for the Stipulated Penalties/Damages, the history of the Site Operator's compliance  
14 with the Decree, the degree of culpability, and the savings (if any) resulting from the non-  
15 compliance. In the event that the Oversight Agency elects not to pursue Stipulated  
16 Penalties/Damages under this Section, the Support Agency may impose Stipulated  
17 Penalties/Damages hereunder, after following the procedures set forth in the MOU and in  
18 accordance with Paragraphs 64 and 65 of this Consent Decree. In such cases, references to  
19 "Oversight Agency" in Sections XVIII, XIX, and XX shall be read as including the "Support  
20 Agency," and references to "Support Agency" shall be read as including "Oversight Agency,"  
21 consistent with this Paragraph.

22 69. The United States, the State agencies, and the Site Operator acknowledge and  
23 agree that any Stipulated Penalties/Damages that may be assessed under Section XX of this  
24 Consent Decree shall be deemed to be penalties for performance deficiencies and not civil or  
25 administrative penalties for violations of law.





1 unknown. These covenants not to sue shall take effect upon the payments that will be made by  
2 the Settling Parties under this Consent Decree, pursuant to Paragraph 6. The covenants not to  
3 sue provided in this Paragraph extend only to the Released Parties and do not extend to any  
4 other person.

5 71. United States' General Reservations of Rights as to the Released Parties. The  
6 covenants not to sue set forth above do not pertain to any matters other than those specified in  
7 Paragraph 70. The United States reserves, and this Consent Decree is without prejudice to, all  
8 rights against the Released Parties with respect to all other matters, including but not limited  
9 to, the following:

10 A. Non-compliance with Consent Decree: claims based on a failure by the  
11 Settling Parties to meet a requirement of this Consent Decree for which they are obligated;

12 B. Release or Disposal of Other Waste Material Inside the Site: claims  
13 arising from the past, present, or future disposal, release, or threat of release of Waste  
14 Materials at locations not within the Iron Mountain Mine Property, but geographically within  
15 the Site, but only for Waste Materials that did not spread or migrate directly or indirectly from  
16 the Iron Mountain Mine Property; to the extent that such other Waste Material mixes or  
17 commingles with Waste Material that has migrated directly or indirectly from the Iron  
18 Mountain Mine Property, each Party reserves its claims and defenses as to any potential  
19 liability associated with Waste Material that has not migrated directly or indirectly from the  
20 Iron Mountain Mine Property, including but not limited to claims and defenses as to joint and  
21 several liability and divisibility of harm.

22 C. Conduct Causing Future Release or Disposal at the Site: claims arising  
23 from future conduct by a Released Party after the Effective Date of this Consent Decree that  
24 causes a new disposal, release, or threat of release of Waste Material at the Site;

25 D. Release or Disposal Outside the Site: claims arising from the past,  
26 present, or future disposal, release, or threat of release of Waste Materials at locations outside

1 the Site, including the past, present, or future disposal, release, or threat of release of Waste  
2 Materials shipped from the Site to a location outside the Site by rail, ship, car, truck, or  
3 similar mechanical conveyance; and

4 E. Criminal liability: claims for criminal liability.

5 72. State Agencies' Covenant Not to Sue the Released Parties.

6 A. Covenant Not to Sue. In consideration of the payments that will be  
7 made by the Settling Parties under the terms of this Consent Decree, and except as specifically  
8 provided in Paragraph 72.B, the State agencies (including, without limitation, any State  
9 department or agency that is included in the definition of the term Natural Resource Trustees)  
10 covenant not to sue or to take administrative action against the Released Parties for any civil  
11 claims or causes of actions, known or unknown, suspected or unsuspected, which the State  
12 agencies have now or may have in the future against the Released Parties, under any federal,  
13 state or common law, arising from or relating to any conditions at the Site, including without  
14 limitation any claims for response costs, for response actions, for Natural Resource Damages,  
15 for contribution, or for other relief based upon the disposal, release or threat of release of the  
16 hazardous substances alleged in the State plaintiffs' complaint at or from the Site. The State  
17 agencies relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits  
18 of Section 1542 of the California Civil Code, which provides:

19 A general release does not extend to claims which the creditor does not know or  
20 suspect to exist in his favor at the time of executing the release, which if known  
21 by him must have materially affected his settlement with the debtor.

22 These covenants not to sue shall take effect upon the payments that will be made by the  
23 Settling Parties under this Consent Decree, pursuant to Paragraph 6. The covenants not to sue  
24 provided in this Paragraph extend only to the Released Parties and do not extend to any other  
25 person.

1 B. General Reservations of Rights. The covenants not to sue set forth  
2 above do not pertain to any matters other than those specified in Paragraph 72.A. The State  
3 agencies reserve, and this Consent Decree is without prejudice to, all rights against the  
4 Released Parties with respect to all other matters, including but not limited to, the following:

5 (1) Non-Compliance with Consent Decree: claims based on a failure  
6 by the Settling Parties to meet a requirement of this Consent Decree for which they are  
7 obligated;

8 (2) Release or Disposal of Other Waste Material Inside the Site:  
9 claims arising from the past, present, or future disposal, release, or threat of release of Waste  
10 Materials at locations not within the Iron Mountain Mine Property, but geographically within  
11 the Site, but only for Waste Materials that did not spread or migrate directly or indirectly from  
12 the Iron Mountain Mine Property; to the extent that such other Waste Material mixes or  
13 commingles with Waste Material that has migrated directly or indirectly from the Iron  
14 Mountain Mine Property, each Party reserves its claims and defenses as to any potential  
15 liability associated with Waste Material that has not migrated directly or indirectly from the  
16 Iron Mountain Mine Property, including but not limited to claims and defenses as to joint and  
17 several liability and divisibility of harm.

18 (3) Conduct Causing Future Release or Disposal at the Site: claims  
19 arising from future conduct by a Released Party after the Effective Date of this Consent  
20 Decree that causes a new disposal, release, or threat of release of Waste Material at the Site;

21 (4) Release or Disposal Outside the Site: claims arising from the  
22 past, present, or future disposal, release, or threat of release of Waste Materials at locations  
23 outside the Site, including the past, present, or future disposal, release, or threat of release of  
24 Waste Materials shipped from the Site to a location outside the Site by rail, ship, car, truck, or  
25 similar mechanical conveyance;

26 (5) Criminal Liability: claims for criminal liability;

1 (6) Past Conduct Outside of Iron Mountain Mine Property Unrelated  
2 to a Release or Disposal of Waste Material: claims arising from past conduct by a Released  
3 Party (before the Effective Date of this Consent Decree) at locations outside the Iron Mountain  
4 Mine Property that is unrelated to the disposal, release, or threat of release of Waste Material;

5 (7) Future Conduct At the Site Unrelated to a Release or Disposal of  
6 Waste Material: claims arising from future conduct by a Released Party (after the Effective  
7 Date of this Consent Decree) at the Site, or outside the Site, that is unrelated to the disposal,  
8 release, or threat of release of Waste Material;

9 (8) Assertion of Exclusive Right to Use or Ownership: claims  
10 arising from an assertion by a Released Party of an exclusive right to use or ownership of any  
11 interest in the bed of any stream, river, reservoir or other water body within the Site; and

12 (9) Water Rights: claims arising from a past violation (before the  
13 Effective Date of this Consent Decree) of any permit or license held by a Released Party to  
14 divert and use water at locations outside the Iron Mountain Mine Property; claims arising from  
15 a future violation (after the Effective Date of this Consent Decree) of any permit or license  
16 held by a Released Party to divert and use water at or outside the Site; or claims or orders,  
17 administrative or judicial, to require a Released Party to cease diverting and using water  
18 without a permit or license at or outside the Site.

19 73. The United States' Covenants Not to Sue the Site Operator, IT Parties, Trust I,  
20 Trust II, or the Trustee. In consideration of the Work that will be performed by the Site  
21 Operator (or by IT to the extent IT becomes the Site Operator under this Consent Decree) as a  
22 RAC, the Site Operator, IT Parties, Trust I, Trust II, and the Trustee shall not be liable under  
23 Sections 101 through 126 of CERCLA, 42 U.S.C. §§ 9601-9626, or under any other federal  
24 law, to any person for injuries, costs, damages, expenses, or other liability (including but not  
25 limited to claims for indemnification or contribution and claims by third parties for death,  
26 personal injury, illness or loss of or damage to property or economic loss) resulting from any

1 release or threatened release of a hazardous substance, pollutant, or contaminant (1) arising  
2 from the Site Operator's performance of the Work, or from the Site Operator's or Trust II's  
3 operation, or Trust I's ownership, of facilities at the Site in connection with the Work, or (2)  
4 arising, prior to the Effective Date of this Consent Decree, from any ownership or operation  
5 of the Site by any of the Released Parties or by any other third party, or from any arrangement  
6 for disposal of any hazardous substances, pollutants, or contaminants at or from the Site by  
7 any of the Released Parties or by any other third party. The protections afforded in this  
8 Paragraph shall not apply in the case of a release that is caused or contributed to by conduct of  
9 the Site Operator not in connection with the Work, or to a release arising from conduct of the  
10 Site Operator in connection with the Work that is negligent, grossly negligent, or that  
11 constitutes intentional misconduct. The protections afforded in this Paragraph shall take effect  
12 upon the initiation of the Work by the Site Operator or the Effective Date of this Consent  
13 Decree, whichever is later, and shall continue throughout the Performance Period, provided,  
14 however, that the protections afforded in this Paragraph shall not apply during and to the  
15 extent of any deficiencies in performance of the Work by the Site Operator that is negligent,  
16 grossly negligent, or that constitutes intentional misconduct. Except as provided in Paragraph  
17 3 (Transferability), the protections afforded in this Paragraph extend only to the Site Operator,  
18 the IT Parties, Trust I, Trust II, and the Trustee, and do not extend to any other person. In  
19 accordance with Section 8.1.4 of the SOW, the Site Operator makes no express or implied  
20 warranty as to its ability to meet the Performance Standards set forth in the SOW.

21 74. United States' General Reservations of Rights as to the Site Operator, the IT  
22 Parties, Trust I, Trust II, and the Trustee. The United States reserves, and this Consent  
23 Decree is without prejudice to, all rights against the Site Operator, the IT Parties, Trust I,  
24 Trust II, and the Trustee with respect to all other matters, including but not limited to, the  
25 following:

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1           A.     Non-compliance with Consent Decree: claims arising from a failure by  
2 the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee to meet a requirement of this  
3 Consent Decree for which they are obligated;

4           B.     Release or Disposal in Connection with the Work: claims for liability  
5 arising from releases or disposal of Waste Material arising from conduct of the Site Operator  
6 in connection with the Work that is negligent, grossly negligent, or that constitutes intentional  
7 misconduct;

8           C.     Release or Disposal not in Connection with the Work: claims for  
9 liability arising from the releases or disposal of Waste Material at or from the Site by the Site  
10 Operator, other than in connection with the Work, to the extent that any such release or  
11 disposal is caused or contributed to by the Site Operator;

12           D.     Violations of Other Laws: claims for liability arising from violations of  
13 federal or state law, not coming within the scope of this Covenant as set forth in Paragraph 73,  
14 which occur during implementation of the Work; and

15           E.     Criminal Liability: claims for criminal liability.

16         75.     The State Agencies' Covenant Not to Sue the Site Operator, the IT Parties,  
17 Trust I, Trust II, or the Trustee.

18           A.     Covenant Not to Sue. In consideration of the Work that will be  
19 performed by the Site Operator under the terms of this Consent Decree and the SOW, and  
20 except as specifically provided in Paragraph 75.D:

21           (1)    The State agencies covenant not to sue or to take administrative  
22 action against the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee, for response  
23 costs, Natural Resource Damages, contribution, civil penalties, civil liabilities or other relief,  
24 under Sections 107, 113 and 310 of CERCLA, 42 U.S.C. §§ 9607, 9613, 9659, Section 7002  
25 of RCRA, 42 U.S.C. § 6972, Sections 301, 311 and 505 of the Clean Water Act, 33 U.S.C.  
26 §§ 1311, 1321, 1365 (to the extent that the State agencies have a right of action under these

1 Clean Water Act sections), Section 25360 of the California Health and Safety Code (the  
2 California Hazardous Substance Account Act), Sections 25181, 25187, 25187.1, 25187.5 and  
3 25189.2(b) and (c) of the California Health and Safety Code (the California Hazardous Waste  
4 Control Act), Sections 13350, 13301, 13304 and 13385 of the California Water Code, and  
5 Sections 2014, 12015 and 12016 of the California Fish and Game Code, arising from the  
6 performance of the Work, operation of facilities at the Iron Mountain Mine Property in  
7 connection with the Work, or ownership of facilities at the Iron Mountain Mine Property in  
8 connection with the Work, by the Site Operator, the IT Parties, Trust I, Trust II, or the  
9 Trustee. These covenants not to sue shall not apply during and only to the extent the  
10 performance of any Work, operation of facilities at the Iron Mountain Mine Property, or  
11 ownership of facilities at the Iron Mountain Mine Property, that is negligent, grossly  
12 negligent, or constitutes intentional misconduct.

13 (2) The Site Operator shall further be entitled to the protections  
14 provided by Sections 107(d) and 119 of CERCLA, 42 U.S.C. §§ 9607(d) and 9619, in  
15 connection with its performance of the Work.

16 (3) The State agencies further covenant not to sue or to take  
17 administrative action against the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee,  
18 for response costs, Natural Resource Damages, contribution, civil penalties, civil liabilities or  
19 other relief, under Sections 107, 113 and 310 of CERCLA, 42 U.S.C. §§ 9607, 9613, 9659,  
20 Section 7002 of RCRA, 42 U.S.C. § 6972, Sections 301, 311 and 505 of the Clean Water Act,  
21 33 U.S.C. §§ 1311, 1321, 1365 (to the extent that the State agencies have a right of action  
22 under these Clean Water Act sections), Section 25360 of the California Health and Safety  
23 Code (the California Hazardous Substance Account Act), Sections 25181, 25187, 25187.1,  
24 25187.5 and 25189.2(b) and (c) of the California Health and Safety Code (the California  
25 Hazardous Waste Control Act), Sections 13350, 13301, 13304 and 13385 of the California  
26 Water Code, and Sections 2014, 12015 and 12016 of the California Fish and Game Code.

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1 arising from past, present or future disposal, release or threat of release of Waste Material that  
2 originated at or on, or at or from, the Iron Mountain Mine Property, occurring other than in  
3 connection with performance of the Work, operation of facilities at the Iron Mountain Mine  
4 Property other than in connection with the Work, or ownership of facilities at the Iron  
5 Mountain Mine Property other than in connection with the Work, by the Site Operator, the IT  
6 Parties, Trust I, Trust II, or the Trustee, and that was not caused or contributed to by the Site  
7 Operator, the IT Parties, Trust I, Trust II, or the Trustee.

8 B. Effective Date. The covenants not to sue in this Paragraph shall take  
9 effect upon the initiation of the Work by the Site Operator or the Effective Date of this  
10 Consent Decree, whichever is later, and shall continue throughout the Performance Period.

11 C. Extends Only to the Site Operator, the IT Parties, Trust I, Trust II, the  
12 Trustee and Approved Transferee. The covenants not to sue provided in this Paragraph extend  
13 only to the Site Operator, the IT Parties, Trust I, Trust II, and the Trustee, and do not extend  
14 to any other person; provided, however, that if the State agencies are in accord with the  
15 United States, as the Oversight Agency, with respect to the approval of an assignment,  
16 delegation, or transfer of the Site Operator's duties and obligations under this Consent Decree  
17 and SOW to a transferee as provided in Paragraph 3, then the State agencies' covenants not to  
18 sue, together with the reservations, provided for in this Paragraph, shall extend to the  
19 approved transferee.

20 D. General Reservations of Rights. The covenants not to sue set forth  
21 above do not pertain to any matters other than those expressly specified in Paragraph 75.  
22 With respect to all other matters, except those in Paragraph 75.D.(1), the State agencies  
23 reserve their rights to bring enforcement actions in State judicial or administrative fora.  
24 Further, the State agencies reserve, and this Consent Decree is without prejudice to, all rights  
25 against the Site Operator, the IT Parties, Trust I, Trust II, and the Trustee with respect to all  
26 other matters, including but not limited to, the following:

1 (1) Non-compliance with Consent Decree: claims arising from a  
2 failure by the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee to meet a  
3 requirement of this Consent Decree for which they are obligated;

4 (2) Release or Disposal in Connection with the Work, Operation or  
5 Ownership: claims for liability arising from, and to the extent of, a disposal, release or threat  
6 of release of Waste Material in connection with performance of the Work, operation of  
7 facilities at the Iron Mountain Mine Property in connection with the Work, or ownership of  
8 facilities at the Iron Mountain Mine Property in connection with the Work, that is negligent,  
9 grossly negligent, or constitutes intentional misconduct.

10 (3) Release or Disposal not in Connection with the Work, Operation  
11 or Ownership: claims for liability arising from any disposal, release or threat of release of  
12 Waste Material at or from the Site by the Site Operator, the IT Parties, Trust I, Trust II, or the  
13 Trustee, other than in connection with the Work, operation of facilities at the Iron Mountain  
14 Mine Property other than in connection with the Work, or ownership of facilities at the Iron  
15 Mountain Mine Property other than in connection with the Work, to the extent that any such  
16 disposal, release or threat of release is caused or contributed to by the Site Operator, the IT  
17 Parties, Trust I, Trust II, or the Trustee.

18 (4) Future Violations of Other Laws: claims for liability arising  
19 from violations of federal or state law not coming within the scope of these Covenants as set  
20 forth in Paragraph 75; and

21 (5) Criminal Liability: claims for criminal liability.

22 76. Work Takeover. The Oversight Agency may assume the performance of all or  
23 any portions of Site activities otherwise to be performed by the Site Operator under this  
24 Consent Decree and the SOW, as set forth in the SOW. In the event of work takeover,  
25 AISLIC shall pay SOW Response Costs as set forth in the Policy, except to the extent such  
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1 costs are not covered by the Policy. As set forth in the SOW, the Site Operator shall be  
2 responsible for SOW Response Costs that are not covered by the Policy.

3 XXII. COVENANTS NOT TO SUE BY THE RELEASED PARTIES, THE SITE  
4 OPERATOR, THE IT PARTIES, THE TRUSTS, AND THE TRUSTEE;

5 INTERGOVERNMENTAL COVENANTS

6 77. Covenants Not to Sue by the Released Parties

7 A. Covenant Not to Sue the United States. In consideration of the  
8 foregoing covenant not to sue by the United States, and subject to Paragraph 78, the Released  
9 Parties hereby covenant not to sue and agree not to assert any claims or causes of action  
10 against the United States with respect to the Site or this Consent Decree, including, but not  
11 limited to:

12 (1) any direct or indirect claim for reimbursement from the  
13 Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26  
14 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§  
15 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

16 (2) any claims against the United States, including any department,  
17 agency or instrumentality of the United States, under Sections 107 or 113 of CERCLA, 42  
18 U.S.C. §§ 9607, 9613, related to the Site;

19 (3) any claims arising out of response activities at the Site, including  
20 claims based on EPA's or the State's selection of response actions, oversight or support of  
21 response activities, approval of plans for such activities, or implementation or operation and  
22 maintenance of such activities;

23 (4) any claims based on alleged ownership, operation, oversight of  
24 operation, or participation or cooperation in operation, of dams, reservoirs or power plants on  
25 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring  
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1 Creek Debris Dam, Reservoir, and power plant. Keswick Dam, Reservoir, and power plant;  
2 and Trinity Dam and Reservoir; and

3 (5) any claims based on alleged ownership of any beds of streams,  
4 rivers, reservoirs, or other water bodies or interest in any state waters or waters of the United  
5 States.

6 B. Covenant Not to Sue the State Agencies. In consideration of the  
7 foregoing covenant not to sue by the State agencies and the payments referred to in Paragraph  
8 7 this Consent Decree, and subject to Paragraph 78, the Released Parties hereby covenant not  
9 to sue and agree not to assert any claims or causes of action, known or unknown, suspected or  
10 unsuspected, which the Released Parties have now or may have in the future against the State  
11 agencies under any federal, state or common law, with respect to the Site or this Consent  
12 Decree, including, but not limited to:

13 (1) any claims under Sections 107 or 113 of CERCLA, 42 U.S.C. §§  
14 9607, 9613;

15 (2) any claims based on alleged ownership, operation, oversight of  
16 operation, or participation or cooperation in operation, of dams, reservoirs or power plants on  
17 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring  
18 Creek Debris Dam, Reservoir and power plant; Keswick Dam, Reservoir, and power plant;  
19 and Trinity Dam and Reservoir;

20 (3) any claims based on alleged ownership by the State of California  
21 of any beds of streams, rivers, reservoirs, or other water bodies, or any interest in state waters  
22 or waters of the United States;

23 (4) any claims based on alleged failure to discharge public trust  
24 duties or supervise appropriated water; and

25 (5) any claims arising out of response activities at the Site, including  
26 but not limited to claims based on EPA's or the State's selection of response actions, oversight  
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1 or support of response activities, approval of plans for such activities, or implementation or  
2 operation and maintenance of such activities.

3 (6) The Released Parties relinquish, to the fullest extent permitted by  
4 law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which  
5 provides:

6 A general release does not extend to claims which the creditor does not know or  
7 suspect to exist in his favor at the time of executing the release, which if known  
8 by him must have materially affected his settlement with the debtor.

9 C. For the purposes of this Paragraph 77 and Paragraph 78, only,  
10 "Released Parties" includes only Stauffer Management Company, Atkemix Thirty-Seven Inc.,  
11 Aventis CropScience USA Inc., Aventis CropScience USA, LP, Rhodia, Inc., Imperial  
12 Chemical Industries PLC, ICI International Investments, Inc., and Zeneca Holdings, Inc.,  
13 together with any of their predecessor or successor entities, and direct or indirect parents or  
14 subsidiaries, to the extent that any such predecessor, successor, or direct or indirect parents or  
15 subsidiaries would be derivatively liable for any liabilities of the companies specifically named  
16 in this Paragraph. If, notwithstanding the Covenants set forth in this Paragraph 77, any  
17 Released Party enumerated in this Subparagraph brings an action precluded by the Covenants  
18 and not authorized by Paragraph 78, the United States and the State agencies reserve the right  
19 to bring claims against such Released Party pursuant to the reservations contained in  
20 Paragraphs 71.A and 72.B.(1) of this Consent Decree.

21 78. Released Parties' Reservations. The Released Parties reserve any defenses to  
22 any order or claim brought by the United States or the State agencies pursuant to the  
23 reservations contained in Paragraphs 71 and 72.B. In addition, the Released Parties reserve  
24 any cross-claims, counterclaims, or third-party claims against the United States or the State  
25 agencies in response to any claims brought by the United States or State agencies against the  
26 Released Parties pursuant to the reservations contained in Paragraphs 71 and 72.B. However,  
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1 the Released Parties may not assert any such counter-, cross-, or third-party claims covered by  
2 the terms of Paragraphs 77.A and 77.B except to the extent that such claims are based on  
3 future conduct by the United States or the State agencies after the Effective Date of this  
4 Consent Decree and occurring outside the Iron Mountain Mine Property and not related to any  
5 disposal, release, or threat of release of Waste Material at or from the Site that has migrated  
6 directly or indirectly from the Iron Mountain Mine Property. The covenants by the Released  
7 Parties set forth in Paragraphs 77.A and 77.B do not include claims based upon a failure by  
8 the United States or the State agencies to comply with the provisions of this Consent Decree,  
9 but only to the extent that any such failure relates to a duty or obligation owed to the Released  
10 Parties.

11 79. Nothing in this Consent Decree shall be deemed to constitute preauthorization  
12 of a claim by the Released Parties within the meaning of Section 111 of CERCLA, 42 U.S.C.  
13 § 9611, or 40 C.F.R. § 300.700(d).

14 80. Covenants Not to Sue by the Site Operator, the IT Parties, Trust I, Trust II, and  
15 the Trustee.

16 A. Covenant Not to Sue the United States. In consideration of the  
17 foregoing covenant not to sue by the United States, the Site Operator, the IT Parties, Trust I,  
18 Trust II, and the Trustee hereby covenant not to sue and agree not to assert any claims or  
19 causes of action against the United States with respect to the Site or this Consent Decree,  
20 including, but not limited to:

21 (1) any direct or indirect claim for reimbursement from the Hazardous  
22 Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C.  
23 § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C.  
24 §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

1 (2) any claims against the United States, including any department,  
2 agency or instrumentality of the United States, under Sections 107 or 113 of CERCLA,  
3 42 U.S.C. §§ 9607, 9613, related to the Site;

4 (3) any claims arising out of response activities at the Site, including  
5 claims based on EPA's or the State's selection of response actions, oversight or support of  
6 response activities, approval of plans for such activities, or implementation or operation and  
7 maintenance of such activities;

8 (4) any claims based on alleged ownership, operation, oversight of  
9 operation, or participation or cooperation in operation, of dams, reservoirs or power plants on  
10 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring  
11 Creek Debris Dam, Reservoir, and power plant, Keswick Dam, Reservoir, and power plant;  
12 and Trinity Dam and Reservoir; and

13 (5) any claims based on alleged ownership of any beds of streams,  
14 rivers, reservoirs, or other water bodies or interest in any state waters or waters of the United  
15 States.

16 B. Covenant Not to Sue the State. In consideration of the foregoing  
17 covenant not to sue by the State agencies, the Site Operator, the IT Parties, Trust I, Trust II,  
18 and the Trustee hereby covenant not to sue and agree not to assert any claims or causes of  
19 action, known or unknown, suspected or unsuspected, against the State of California, or any of  
20 its agencies, under federal or state law, with respect to the Site or this Consent Decree.  
21 including, but not limited to:

22 (1) any claims under Sections 107 or 113 of CERCLA, 42 U.S.C.  
23 §§ 9607, 9613;

24 (2) any claims based on alleged ownership, operation, oversight of  
25 operation, or participation or cooperation in operation, of dams, reservoirs or power plants on  
26 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring  
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1 Creek Debris Dam, Reservoir, and power plant, Keswick Dam, Reservoir, and power plant:  
2 and Trinity Dam and Reservoir:

3 (3) any claims based on alleged ownership by the State of California  
4 of any beds of streams, rivers, reservoirs, or other water bodies, or any interest in state waters  
5 or waters of the United States:

6 (4) any claims based on alleged failure to discharge public trust  
7 duties or supervise appropriated water; and

8 (5) any claims arising out of response activities at the Site, including  
9 but not limited to claims based on EPA's or the State's selection of response actions, oversight  
10 or support of response activities, approval of plans for such activities, or implementation or  
11 operation and maintenance of such activities.

12 C. Claims not Included.

13 (1) The covenants by the Site Operator, the IT Parties, Trust I, Trust  
14 II, and the Trustee set forth in this Paragraph 80 do not include claims for nonpayment for  
15 work required by the Oversight Agency under Section 4.2.1 of the SOW to the extent not paid  
16 for, or claims for reimbursement of costs incurred in defending or indemnifying the State or  
17 federal government under Section 5.3.2 of the SOW to the extent such costs are found by a  
18 court of competent jurisdiction to have arisen out of a claim, liability, loss, or damage caused  
19 by the sole negligence or willful misconduct of the State or federal government. No act or  
20 omission constituting the sole negligence or willful misconduct of the State shall be imputed or  
21 attributed to the federal government, and no act or omission constituting the sole negligence or  
22 willful misconduct of the federal government shall be imputed or attributed to the State.

23 (2) The covenants by the Site Operator, the IT Parties, Trust I, Trust  
24 II, and the Trustee set forth in this Paragraph 80 do not include claims against the United  
25 States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for  
26 money damages for injury or loss of property or personal injury or death caused by the



1 negligent or wrongful act or omission of any employee of the United States while acting within  
2 the scope of his office or employment under circumstances where the United States, if a  
3 private person, would be liable to the claimant in accordance with the law of the place where  
4 the act or omission occurred. However, any such claim shall not include a claim for any  
5 damages caused, in whole or in part, by the act or omission of any person, including any  
6 contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor  
7 shall any such claim include a claim based on EPA's selection of response actions, or the  
8 oversight or approval of the Site Operator's plans or activities. The foregoing applies only to  
9 claims which are brought pursuant to any statute other than CERCLA and for which the  
10 waiver of sovereign immunity is found in a statute other than CERCLA.

11 (3) The Site Operator, the IT Parties, Trust I, Trust II, and the  
12 Trustee reserve any defenses to any order or claim brought by the United States or the State  
13 agencies pursuant to the reservations contained in Paragraphs 74 and 75.D of this Consent  
14 Decree.

15 81. Nothing in this Consent Decree shall be deemed to constitute preauthorization  
16 of a claim by the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee within the  
17 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

18 82. Subject to Section XXI of this Consent Decree (Covenants Not to Sue by the  
19 United States and the State agencies), the United States and the State retain all authority and  
20 reserve all rights to take any and all response actions authorized by law.

21 83. Intergovernmental Covenants.

22 A. Definitions. For purposes of this Paragraph 83, "Iron Mountain Mine"  
23 shall mean that portion of the Iron Mountain Mine Superfund Site located in Shasta County,  
24 California, approximately 9 miles northwest of the City of Redding, consisting of approxi-  
25 mately 8,000 acres of land that includes the mining property on the topographic feature known  
26 as Iron Mountain, several inactive underground and open pit mines, numerous waste piles,

1 abandoned mining and smelter facilities, abandoned transportation facilities (including without  
2 limitation rail sidings at Matheson and Keswick, the tramway from the Richmond mine to  
3 Matheson, and the former rail line from Keswick to the Iron Mountain mine), and mine  
4 drainage treatment facilities.

5 For purposes of this Paragraph 83, Iron Mountain Mine shall not include the  
6 downstream reaches of Boulder Creek, Slickrock Creek, Spring Creek, Spring Creek  
7 Reservoir, the Spring Creek Debris Dam, or Keswick Reservoir. For purposes of this  
8 Paragraph 83 and the Consent Decree, these downstream reaches and facilities together with  
9 Iron Mountain Mine are known as the "Iron Mountain Mine Property." Also for purposes of  
10 this Paragraph 83, Iron Mountain Mine shall not include locations where Waste Material from  
11 the Iron Mountain Mine Property have spread or migrated by surface water, groundwater, air  
12 dispersion, or other medium. For purposes of this Paragraph 83 and the Consent Decree, the  
13 locations where Waste Material from the Iron Mountain Mine Property has come to be  
14 located, together with the Iron Mountain Mine Property and the Land as defined in Paragraph  
15 6.E, are known as the "Site."

16 B. United States' Covenant Not to Sue. In consideration of the settlement  
17 and the two sovereigns' efforts towards abatement of the Waste Material released from Iron  
18 Mountain Mine, the United States covenants not to file a civil suit or to take administrative  
19 action against the State agencies pursuant to Sections 106, 107, and 113 of CERCLA,  
20 42 U.S.C. §§ 9606, 9607, 9613, for any matter arising from or relating to the disposal,  
21 release or threat of release at or from the Site, past or future, of Waste Material that originated  
22 at or from Iron Mountain Mine, including but not limited to:

23 (1) any claims based on alleged ownership, operation, oversight of  
24 operation, or participation or cooperation in operation of dams, reservoirs or power plants on  
25 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring  
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1 Creek Debris Dam, Reservoir, and power plant; Keswick Dam, Reservoir, and power plant;  
2 and Trinity Dam and Reservoir;

3 (2) any claims against the State or the State agencies based on alleged  
4 ownership of any beds of streams, rivers, reservoirs, or other water bodies, or interest in any  
5 waters, in or at the Site;

6 (3) any claims based on alleged failure to discharge public trust  
7 duties, to supervise appropriated water, to discharge other duties or to take other action; and

8 (4) except as provided in Section XXVIII of this Consent Decree,  
9 any claims arising out of response activities at the Site, including but not limited to claims  
10 based on any selection by the State agencies of response actions, oversight or support of  
11 response activities, approval of plans for such activities, or implementation or operation and  
12 maintenance of such activities.

13 The United States further covenants not to file a civil suit or to take administrative action  
14 against the State agencies under RCRA as to any matter arising from or relating to the  
15 disposal, release or threat of release at or from the Site, past or future, of Waste Material that  
16 originated at or from Iron Mountain Mine, based on activities by the State agencies or  
17 ownership by the State, as set forth in Subparagraphs (1)-(4) above, in a sovereign capacity.

18 C. State Agencies' Covenant Not to Sue. In consideration of the settlement  
19 and the two sovereigns' efforts towards abatement of the Waste Material released from Iron  
20 Mountain Mine, the State agencies covenant not to file a civil suit or to take administrative  
21 action against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.  
22 §§ 9607, 9613, and Sections 25355.5, 25358.3 (a) and (e), 25359.3, 25359.4 and 25360 of the  
23 California Health and Safety Code (California Hazardous Substances Account Act), for any  
24 matter arising from or relating to the disposal, release or threat of release at or from the Site,  
25 past or future, of Waste Material that originated at or from Iron Mountain Mine, including but  
26 not limited to:

1 (1) any claims based on alleged ownership, operation, oversight of  
2 operation, or participation or cooperation in operation of dams, reservoirs or power plants on  
3 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring  
4 Creek Debris Dam, Reservoir, and power plant; Keswick Dam, Reservoir, and power plant;  
5 and Trinity Dam and Reservoir;

6 (2) any claims based on alleged ownership of any beds of streams,  
7 rivers, reservoirs, or other water bodies, or interest in any waters, in or at the Site;

8 (3) any claims based on alleged failure to discharge duties or to take  
9 other action; and

10 (4) except as provided in Section XXVIII of this Consent Decree,  
11 any claims arising out of response activities at the Site, including but not limited to claims  
12 based on any selection by the United States of response actions, oversight or support of  
13 response activities, approval of plans for such activities, or implementation or operation and  
14 maintenance of such activities.

15 The State agencies further covenant not to file a civil suit or to take administrative action  
16 against the United States under Section 7002 of RCRA, 42 U.S.C. § 6972, and Chapter 6.5 of  
17 Division 20 of the California Health and Safety Code (California Hazardous Waste Control  
18 Law), Section 25100 et seq., as to any matter arising from or relating to the disposal, release  
19 or threat of release at or from the Site, past or future, of Waste Material that originated at or  
20 from Iron Mountain Mine, based on activities or ownership by the United States, as set forth  
21 in Subparagraphs (1)-(4) above, in a sovereign capacity.

22 D. Reservation of Rights; Effective Date. The covenants not to sue or to  
23 take administrative action set forth in Paragraph 83 of this Consent Decree apply only to  
24 Waste Material originating at or from Iron Mountain Mine. The covenants in Paragraph 83 do  
25 not apply to any matter other than those expressly specified in Paragraph 83. The United  
26 States and the State agencies reserve, and this Consent Decree is without prejudice to, all  
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1 rights with respect to all other matters. The covenants in Paragraph 83 shall take effect on the  
2 Effective Date of this Consent Decree.

3 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

4 84. Nothing in this Consent Decree shall be construed to create any rights in, or  
5 grant any cause of action to, any person not a Party to this Consent Decree or not a Released  
6 Party. Subject to Paragraph 85, the preceding sentence shall not be construed to waive or  
7 nullify any rights that any person not a signatory to this Consent Decree may have under  
8 applicable law. Each of the Parties expressly reserves any and all rights (including, but not  
9 limited to, any right to contribution), defenses, claims, demands, and causes of action which  
10 each Party may have with respect to any matter, transaction, or occurrence relating in any way  
11 to the Site against any person not a Party hereto.

12 85. The United States and the State agencies acknowledge and agree, and by  
13 entering this Consent Decree this Court finds, that the payments to be made by the Settling  
14 Parties pursuant to this Consent Decree represent a good faith settlement and compromise of  
15 disputed claims, that the Work to be performed under this Consent Decree and the SOW by  
16 the Site Operator represents a valuable benefit to the United States and the State agencies, and  
17 that the settlement represents a fair, reasonable, and equitable resolution of the matters  
18 addressed in this Consent Decree. The Parties further agree, and by entering this Consent  
19 Decree this Court finds, that the Released Parties, the Site Operator, the IT Parties, Trust I,  
20 Trust II, and the Trustee are entitled, as of the Effective Date of this Consent Decree, to  
21 protection from costs, damages, actions, or other claims (whether seeking contribution,  
22 indemnification, or however denominated) for matters addressed in this Consent Decree, as  
23 provided by (1) CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and (2) all other  
24 applicable provisions of federal or state statutes or of common law that may limit or extinguish  
25 their potential liability to persons not a party to this Consent Decree, including without  
26 limitation Sections 877 and 877.6 of the California Code of Civil Procedure.

1           86.    The "matters addressed" in this settlement are all response actions taken or to  
2 be taken, all response costs incurred or to be incurred, and all *Natural Resource Damages*  
3 incurred or to be incurred, by the United States, the State agencies, or any other person with  
4 respect to the Site, and specifically include without limitation the Work to be performed by the  
5 Site Operator, all claims, counterclaims, and cross-claims filed by and against the parties in  
6 the above-captioned cases, and those matters governed by the covenants contained in Sections  
7 XXI and XXII of this Consent Decree.

8           87.    As to the Released Parties, the "matters addressed" in this settlement do not  
9 include those matters as to which the United States and the State agencies have reserved their  
10 rights under this Consent Decree, pursuant to Paragraphs 71 and 72.B, in the event that the  
11 United States or the State agencies assert a claim against the Released Parties coming within  
12 the scope of such reservations.

13           88.    As to the Site Operator, the IT Parties, Trust I, Trust II, and the Trustee, the  
14 "matters addressed" in this settlement do not include those matters as to which the United  
15 States and the State agencies have reserved their rights under this Consent Decree pursuant to  
16 Paragraphs 74 and 75.D (except for claims for the failure by the Site Operator to comply with  
17 the terms of this Consent Decree), in the event that the United States or the State agencies  
18 assert a claim against the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee coming  
19 within the scope of such reservations.

20           89.    The Settling Parties agree that with respect to any suit or claim for contribution  
21 brought by them for matters related to this Consent Decree they will notify the United States  
22 and the State in writing no later than 60 days prior to the initiation of such suit or claim.

23           90.    The Settling Parties also agree that with respect to any suit or claim for  
24 contribution brought against them for matters related to this Consent Decree they will notify in  
25 writing the United States and the State within 30 days of service of the complaint on them. In  
26 addition, the Settling Parties shall notify the United States and the State within 10 days of  
27

1 service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any  
2 order from a court setting a case for trial.

3 91. In any subsequent administrative or judicial proceeding initiated by the United  
4 States or the State agencies provided for by Paragraphs 71.A-E or 72.B (1)-(9), the Settling  
5 Parties shall not assert, and may not maintain, any defense or claim based upon the principles  
6 of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses  
7 based upon any contention that the claims raised by the United States or the State agencies in  
8 the subsequent proceeding were or should have been brought in the instant case; provided,  
9 however, that nothing in this Paragraph affects the enforceability of the covenants not to sue  
10 set forth in Section XXI of this Consent Decree.

11 XXIV. ACCESS TO INFORMATION

12 92. The Settling Parties shall provide to the United States and the State plaintiffs,  
13 upon request, copies of all documents within their possession or control, including all  
14 documents reasonably obtainable from any of their contractors or agents (including from their  
15 document repositories or custodians), relating to activities at the Site, including, but not  
16 limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,  
17 reports, sample traffic routing, correspondence, or other documents related to the activities  
18 conducted at the Site. The requirements of this Paragraph shall not apply to documents  
19 previously exchanged between the Settling Parties and the United States or the State plaintiffs  
20 prior to the Effective Date of this Consent Decree, unless any such documents are specifically  
21 so requested within 90 days of the Effective Date of this Consent Decree.

22 93. The Site Operator shall provide documents and information relating to the Site  
23 and implementation of the requirements of this Consent Decree and the SOW, as specified in  
24 the SOW.

25 94. The Settling Parties and the Site Operator may assert business confidentiality  
26 claims covering part or all of the documents or information submitted to Plaintiffs under this

1 Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of  
2 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information  
3 determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R.  
4 Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when  
5 they are submitted to EPA and the State plaintiffs, or if EPA has provided 14 days' notice (or  
6 such shorter notice period as is reasonable and necessary under the circumstances) to the  
7 Settling Parties or the Site Operator that the documents or information are not confidential  
8 under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such  
9 documents or information without further notice to the Settling Parties or the Site Operator.  
10 The Settling Parties and the Site Operator shall have all rights and remedies provided by law  
11 to contest any decision by EPA regarding confidentiality.

12 95. The Settling Parties and the Site Operator may assert that certain documents,  
13 records and other information are privileged under the attorney-client privilege or any other  
14 privilege recognized by federal law or applicable state law. If the Settling Parties or the Site  
15 Operator asserts such a privilege in lieu of providing documents, they shall provide the  
16 Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date  
17 of the document, record, or information; (3) the name and title of the author of the document,  
18 record, or information; (4) the name and title of each addressee and recipient; (5) a description  
19 of the contents of the document, record, or information; and (6) the privilege asserted by the  
20 Settling Parties or the Site Operator. However, no documents, reports or other information  
21 created or generated by the Site Operator pursuant to the specific requirements of this Consent  
22 Decree or the SOW shall be withheld on the grounds that they are privileged.

23 96. No claim of privilege as against the Plaintiffs, other than business  
24 confidentiality, shall be made by the Site Operator with respect to any data, including, but not  
25 limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,  
26 engineering, or cost data (excepting cost data related to wages, overhead rates, or profit), or  
27



1 any other documents or information evidencing conditions at or around the Site. However,  
2 nothing in this Paragraph shall be construed to effect a waiver of any such claim of privilege  
3 as against any person not a party to this Consent Decree, and no submission of documents or  
4 other information pursuant to this Section shall be construed as such a waiver.

#### 5 XXV. RETENTION OF RECORDS

6 97. Until 10 years after the Effective Date of this Consent Decree, unless a shorter  
7 document retention period applies under Paragraph 99, the Settling Parties shall preserve and  
8 retain all records and documents now in their possession or control or that come into their  
9 possession or control that relate in any manner to the performance of activities at the Site or  
10 the liability of any person for response actions conducted and to be conducted at the Site,  
11 regardless of any corporate retention policy to the contrary. This obligation does not apply to  
12 documents previously exchanged between the Settling Parties and the United States or the State  
13 plaintiffs prior to the Effective Date of this Consent Decree. Until 10 years after the Effective  
14 Date of this Consent Decree, the Settling Parties shall also instruct their contractors and agents  
15 to preserve all documents, records, and information of whatever kind, nature or description  
16 relating to the performance of activities at the Site.

17 98. The Site Operator shall preserve and retain all records and documents as  
18 specified in the SOW.

19 99. At the conclusion of the applicable document retention period specified above,  
20 the Settling Parties shall notify the United States and the State plaintiffs at least 90 days prior  
21 to the destruction of any such records or documents and, upon request by the United States or  
22 the State plaintiffs, the Settling Parties shall deliver any such records or documents to the  
23 United States or the State plaintiffs. At any time prior to the conclusion of the document  
24 retention period, the Settling Parties may elect to notify the United States and the State  
25 plaintiffs that they wish to transfer documents subject to the requirements of this Section.  
26 Upon request by the United States or the State plaintiffs, within 90 days of such notification,  
27  
28

1 the Settling Parties shall deliver any requested documents to the United States or the State  
2 plaintiffs. Documents not requested upon notification by the Settling Parties, either prior to or  
3 following the document retention period, may be disposed of by the Settling Parties.

4 100. The Settling Parties and the Site Operator may assert that certain documents,  
5 records and other information are privileged under the attorney-client privilege or any other  
6 privilege recognized by federal law or applicable state law. If the Settling Parties or the Site  
7 Operator asserts such a privilege, they shall provide the Plaintiffs with the following: (1) the  
8 title of the document, record, or information; (2) the date of the document, record, or  
9 information; (3) the name and title of the author of the document, record, or information; (4)  
10 the name and title of each addressee and recipient; (5) a description of the subject of the  
11 document, record, or information; and (6) the privilege asserted by the Settling Parties or the  
12 Site Operator. However, no documents, reports or other information created or generated by  
13 the Site Operator pursuant to the requirements of the Consent Decree shall be withheld on the  
14 grounds that they are privileged. Further, nothing in this Paragraph shall be construed to  
15 effect a waiver of any such claim of privilege as against any person not a party to this Consent  
16 Decree, and no delivery of documents to the Plaintiffs pursuant to this Section shall be  
17 construed as such a waiver.

#### 18 XXVI. NOTICES AND SUBMISSIONS

19 101. Whenever, under the terms of this Consent Decree, written notice is required to  
20 be given or a report or other document is required to be sent by one Party to another, it shall  
21 be directed to the individuals at the addresses specified below, unless those individuals or their  
22 successors give notice of a change to the other Parties in writing. All notices and submissions  
23 shall be considered effective upon receipt, unless otherwise provided. Written notice as  
24 specified herein shall constitute complete satisfaction of any written notice requirement of the  
25 Consent Decree with respect to the United States, EPA, the State, the Settling Parties, and the  
26 Site Operator, respectively.

1 As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-196A

2  
3  
4 and

5 David B. Glazer  
6 Environmental Enforcement Section  
7 Environment and Natural Resources Division  
8 U.S. Department of Justice  
9 301 Howard Street, Suite 870  
10 San Francisco, CA 94105

11 As to EPA:

12 Director, Superfund Division  
13 United States Environmental Protection Agency  
14 Region 9  
15 75 Hawthorne Street  
16 San Francisco, CA 94105

17 Rick Sugarek  
18 EPA Project Coordinator  
19 United States Environmental Protection Agency  
20 Region 9  
21 75 Hawthorne Street  
22 San Francisco, CA 94105

23 As to the Natural Resource Trustees:

24 Manager  
25 California/Nevada Operations  
26 U.S. Fish and Wildlife Service  
27 2800 Cottage Way Suite W-2606  
28 Sacramento, CA 95825

Katherine Pease  
Senior Counselor for Natural Resources  
Office of General Counsel, NOAA  
Suite 4470  
501 W. Ocean Blvd.  
Long Beach, CA 90802

Robert C. Hight, Director  
Department of Fish and Game  
1416 Ninth Street, 12th Floor  
Sacramento, CA 95814

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Don Koch, Regional Manager  
Northern California-North Coast Region  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001  
(530)225-2363

As to the State, the State plaintiffs,  
and the State agencies:

Executive Officer  
Regional Water Quality Control Board, Central  
Valley Region  
3443 Routier Road  
Sacramento, CA 95827-3098

James Pedri, Assistant Executive Officer  
Regional Water Quality Control Board, Central  
Valley Region  
415 Knollcrest Drive  
Redding, CA 96002  
(530) 224-4845

Director, Department of Toxic Substances Control  
400 P Street, P.O. Box 806  
Sacramento, CA 95814

James Tjosvold, Chief  
Northern and Central California Cleanup  
Operations Branch  
Department of Toxic Substances Control  
10150 Croydon Way, Suite 3  
Sacramento, CA 95827-2106  
(916) 255-3740

As to the Settling Parties:

Joseph C. Kelly  
Vice President and General Counsel  
Stauffer Management Company  
1800 Concord Pike  
P.O. Box 15438  
Wilmington, DE 19850-5438  
(302) 886-3745

As to the Site Operator:

Mario Maciel, President  
IT Iron Mountain Operations, LLC  
4005 Port Chicago Highway  
Concord, CA 94520

James M. Redwine, Vice President  
IT Iron Mountain Operations, LLC  
2790 Mossie Boulevard  
Monroeville, PA 15146

1 As to Trust I and Trust II:

Iron Mountain Mine Remediation Trust  
c/o IT Administrative Services, LLC  
4005 Port Chicago Highway  
Concord, CA 94520  
Attn: Mario Maciel, President

4 Iron Mountain Mine Remediation Trust  
5 c/o IT Administrative Services, LLC  
6 2790 Mosside Boulevard  
7 Monroeville, PA 15146  
8 Attn: James M. Redwine, Vice President

9 As to the Trustee:

Mario Maciel, President  
IT Administrative Services, LLC  
4005 Port Chicago Highway  
Concord, CA 94520

10 James M. Redwine, Vice President  
11 IT Administrative Services, LLC  
12 2790 Mosside Boulevard  
13 Monroeville, PA 15146

14 As to IT Corporation:

Mario Maciel,  
Director of Construction for the  
Commercial and Engineering Group  
IT Corporation  
4005 Port Chicago Highway  
Concord, CA 94520

16 Gary Gardner, Senior Vice President  
17 President, Commercial Engineer and Construction  
18 Group  
19 IT Corporation  
20 200 Horizon Center Boulevard  
21 Trenton, NJ 08691-1904

22 James M. Redwine  
23 Vice President  
24 IT Corporation  
25 2790 Mosside Boulevard  
26 Monroeville, PA 15146

27 As to The IT Group, Inc:

Mario Maciel,  
Director of Construction for the  
Commercial and Engineering Group  
The IT Group, Inc.  
4005 Port Chicago Highway  
Concord, CA 94520

28

1 Gary Gardner, Senior Vice President  
2 President, Commercial Engineer and Construction  
3 Group  
4 The IT Group, Inc.  
5 200 Horizon Center Boulevard  
6 Trenton, NJ 08691-1904

7 James M. Redwine  
8 Vice President  
9 The IT Group, Inc.  
10 2790 Mosside Boulevard  
11 Monroeville, PA 15146

12 As to AISLIC:

13 Manager, Pollution Insurance Products  
14 Unit  
15 AIG Technical Services, Inc.  
16 Environmental Claims Department  
17 80 Pine Street, Sixth Floor  
18 New York, New York 10005

19 XXVII. EFFECTIVE DATE

20 102. The Effective Date of this Consent Decree shall be the date upon which this  
21 Consent Decree is initially approved and entered by the Court.

22 XXVIII. RETENTION OF JURISDICTION

23 103. This Court retains jurisdiction over:

- 24 A. the subject matter of this Consent Decree,  
25 B. issues that cannot otherwise be resolved arising between the United  
26 States and the State over the subject matter of this Consent Decree, and  
27 C. the Settling Parties, Site Operator, IT, ITX, and AISLIC for the duration  
28 of their respective performance of the terms and provisions of this Consent Decree.

Such continuing jurisdiction shall be for the purpose of:

D. enabling any of the Parties to apply to the Court at any time for such  
further order, direction, and relief as may be necessary or appropriate for the construction of  
this Consent Decree, or modification of this Consent Decree pursuant to Section XXXI.

E. to effectuate or enforce compliance with the terms of this Consent  
Decree.

1 F. to resolve disputes in accordance with Section XIX (Dispute Resolution)  
2 hereof, and

3 G. to resolve disputes arising under this Consent Decree between the United  
4 States and the State that cannot be otherwise resolved in accordance with the procedures set  
5 forth in the MOU.

6 XXIX. APPENDICES

7 104. The following appendices are attached to and incorporated into this Consent  
8 Decree:

9 "Appendix A" is ROD 1

10 "Appendix B" is ROD 2

11 "Appendix C" is ROD 3

12 "Appendix D" is ROD 4

13 "Appendix E" is the SOW

14 "Appendix F" is the map of the Site

15 "Appendix G" is the Action Memorandum for the Flat Creek Bridge removal action

16 "Appendix H" is the MOU

17 "Appendix I" is the DOI payment instructions

18 "Appendix J" is the Policy

19 "Appendix K" is the Iron Mountain Mine Remediation Trust Agreement II

20 "Appendix L" is the map depicting the Land

21 "Appendix M" is the Access Agreement

22 "Appendix N" is the Iron Mountain Mine Remediation Trust Agreement I

23 XXX. COMMUNITY RELATIONS

24 105. The Site Operator shall cooperate with EPA, the State plaintiffs, and the Natural  
25 Resource Trustees in providing information regarding the activities required by this Consent  
26 Decree to the public. As requested by EPA, the State plaintiffs, or the Natural Resource

1 Trustees, the Site Operator shall participate in the preparation of such information for  
2 dissemination to the public and in public meetings that may be held or sponsored by EPA or  
3 the State plaintiffs to explain activities at or relating to the Site.

4 XXXI. MODIFICATION

5 106. This Consent Decree may be modified by agreement of the Parties and approval  
6 by the Court. All such modifications shall be made in writing.

7 107. Except as provided in the SOW, no material modifications shall be made to the  
8 SOW without written notification to and written approval of the Oversight Agency, with the  
9 concurrence of the Support Agency, and the Site Operator. Modifications to the SOW that do  
10 not materially alter that document may be made by written agreement between the Oversight  
11 Agency and the Site Operator. Modifications to the Policy allowed by the Policy may be made  
12 in accordance with the terms and conditions of the Policy.

13 108. Nothing in this Consent Decree shall be deemed to alter the Court's power to  
14 enforce, supervise or approve modifications to this Consent Decree.

15 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

16 109. This Consent Decree shall be lodged with the Court for a period of not less than  
17 thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of  
18 CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. In accordance with Section  
19 7003(d) of RCRA, 42 U.S.C. § 6973(d), members of the public will be given notice and an  
20 opportunity for a public meeting in the affected area and a reasonable opportunity to comment  
21 on the proposed settlement prior to its final entry. The United States reserves the right to  
22 withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts  
23 or considerations which indicate that the Consent Decree is inappropriate, improper, or  
24 inadequate. The Settling Parties and the Site Operator consent to the entry of this Consent  
25 Decree without further notice.





1 Sacramento River Between Keswick Reservoir and Red Bluff, in order to restore natural  
2 resources.

3 113. The details for specific projects will be contained in a restoration plan proposal  
4 or proposals to be developed jointly by the Natural Resource Trustees. Any final restoration  
5 plan will be prepared and implemented jointly by the Natural Resource Trustees, after  
6 providing public notice, opportunity for public input, and consideration of any public  
7 comment. The Natural Resource Trustees jointly retain the ultimate authority and  
8 responsibility to use the funds in the Iron Mountain Mine NRD Account to restore natural  
9 resources in accordance with applicable law, this Consent Decree, and any MOU entered into  
10 by the Natural Resource Trustees.

11 XXXIV. SIGNATORIES/SERVICE

12 114. Each undersigned representative of a Party to this Consent Decree and the  
13 Assistant Attorney General for the Environment and Natural Resources Division of the U.S.  
14 Department of Justice certifies that he or she is fully authorized to enter into the terms and  
15 conditions of this Consent Decree and to execute and legally bind such Party to this document.

16 115. The Settling Parties and the Site Operator hereby agree not to oppose entry of  
17 this Consent Decree by this Court or to challenge any provision of this Consent Decree unless  
18 the United States has notified the Settling Parties and the Site Operator in writing that it no  
19 longer supports entry of the Consent Decree.

20 116. Each Settling Party and the Site Operator shall identify, on the attached  
21 signature page, the name, address and telephone number of an agent who is authorized to  
22 accept service of process by mail on behalf of that Party with respect to all matters arising  
23 under or relating to this Consent Decree. The Settling Parties and the Site Operator hereby  
24 agree to accept service in that manner and to waive the formal service requirements set forth in  
25 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court,  
26 including, but not limited to, service of a summons.

1 117. This Consent Decree may be signed in counterparts, and such counterpart  
2 signature pages shall be given full force and effect.

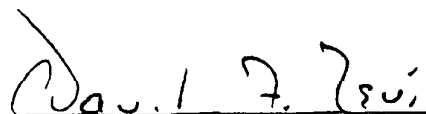
3 XXXV. ADMINISTRATIVE ORDERS

4 118. Upon the performance by the Settling Parties of the funding obligations required  
5 under Paragraph 6 of this Consent Decree, the Settling Defendant shall have no further  
6 obligations under the administrative orders issued by EPA or DTSC to date. If, following the  
7 Effective Date of this Consent Decree, the Consent Decree is vacated and not reentered, so  
8 that there is no Date of Final Approval, EPA and DTSC may reinstate the obligations of those  
9 administrative orders as to the Settling Defendant.

10 XXXVI. FINAL JUDGMENT

11 119. Upon approval and entry of this Consent Decree by the Court, this Consent  
12 Decree shall constitute a final judgment between and among the United States, the State  
13 agencies, and the Settling Defendant and, among other things, resolves all claims, counter-  
14 claims, and third-party claims filed in the above-captioned cases between and among those  
15 Parties. The Court finds that there is no just reason for delay and therefore enters this  
16 judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

17  
18 SO ORDERED THIS 8 DAY OF December, 2000.

19  
20   
21 Hon. David F. Levi  
22 United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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FOR THE UNITED STATES OF AMERICA

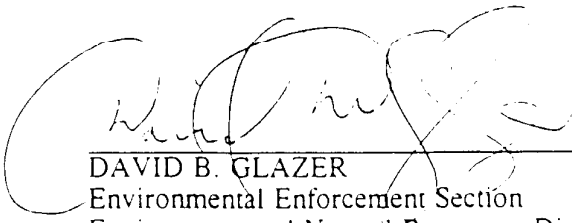
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Date

\_\_\_\_\_  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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Oct. 16, 2000  
Date



DAVID B. GLAZER  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
301 Howard Street, Suite 870  
San Francisco, California 94105  
(415) 744-6491

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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10-16-2000  
Date

Keith Takata  
KEITH TAKATA  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, California 94105

7/17/2000  
Date

Thomas A. Bloomfield  
THOMAS A. BLOOMFIELD  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, California 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
2 v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

3 FOR THE STATE OF CALIFORNIA, on behalf  
4 of the Department of Toxic Substances Control,  
5 the CHSA, the CHSCF, the CTSCA, the Regional  
6 Water Quality Control Board for the Central  
7 Valley Region, the State Water Resources Control  
8 Board, the Department of Fish and Game, and the  
9 State Lands Commission:


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Date 10/17/00

Thomas Howard for  
EDWARD C. ANTON, Acting Executive Director  
State Water Resources Control Board  
901 P Street  
Sacramento, California 95827

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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GARY CARLTON, Executive Officer  
Regional Water Quality Control Board,  
Central Valley Region  
3443 Routier Road, Suite A  
Sacramento, California 95827-3098



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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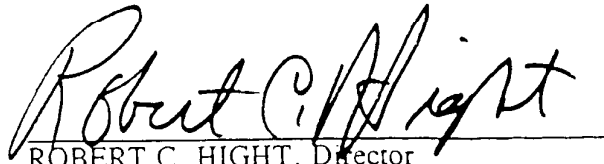
10/17/00  
Date

Edwin F. Lowry  
EDWIN F. LOWRY, Director  
Department of Toxic Substances Control  
(and on behalf of the CHSA, the CHSCF,  
and CTSCA)  
400 P Street, 4<sup>th</sup> Floor, P.O. Box 806  
Sacramento, California 95812-0806

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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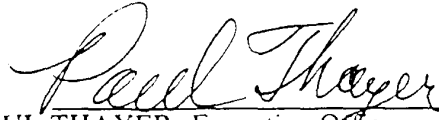


ROBERT C. HIGHT, Director  
Department of Fish and Game  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, California 95814

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

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10/18/00  
Date



PAUL THAYER, Executive Officer  
State Lands Commission  
100 Howe Ave., Suite 100  
Sacramento, California 95825

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
2 v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

3 FOR AVENTIS CROPSCIENCE USA INC.

4  
5 10/16/00  
6 Date

7 Signature: *George S. Goodhue*  
8 Name (print): George S. Goodhue  
9 Title: Associate General Counsel  
10 Address: Aventis CropScience USA Inc.  
2700 Alexander Drive  
Research Triangle Park, NC 27709  
919-549-3000

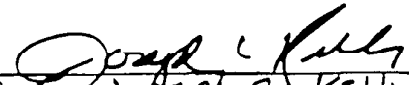
11  
12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

13  
14 Name (print): Joseph C. Kelly, Esquire  
15 Title: General Counsel  
16 Address: Stauffer Management Company  
P.O. Box 15438  
1800 Concord Pike  
Wilmington, DE 19850-5438  
17 Ph. Number: 302-886-3745

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
2 v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

3  
4  
5  
6 FOR STAUFFER MANAGEMENT COMPANY

7  
8 10/16/00  
9 Date

Signature:   
Name (print): Joseph C. Kelly  
Title: Vice President  
Address: Stauffer Management Company  
P.O. Box 15438  
1800 Concord Pike  
Wilmington, DE 19850-5438

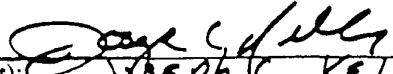
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15 Agent Authorized to Accept Service on Behalf of Above-signed Party:

16  
17 Name (print): Joseph C. Kelly, Esquire  
18 Title: General Counsel  
19 Address: Stauffer Management Company  
P.O. Box 15438  
1800 Concord Pike  
20 Wilmington, DE 19850-5438  
21 Ph. Number: 302-886-3745

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States  
2 v. Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

3  
4  
5  
6 FOR ATKEMIX THIRTY-SEVEN INC.

7  
8 10/16/00  
9 Date

Signature:   
Name (print): JOSEPH C. KELLY  
Title: Authorized Representative  
Address: Atkemix Thirty-Seven Inc.  
P.O. Box 15438  
1800 Concord Pike  
Wilmington, DE 19850-5438

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15 Agent Authorized to Accept Service on Behalf of Above-signed Party:

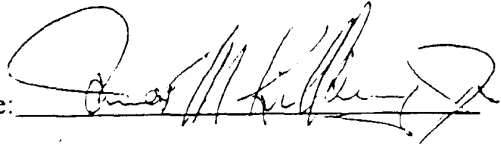
16  
17 Name (print): Joseph C. Kelly, Esquire  
18 Title: General Counsel  
19 Address: Stauffer Management Company  
20 P.O. Box 15438  
21 1800 Concord Pike  
22 Wilmington, DE 19850-5438  
23 Ph. Number: 302-886-3745  
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.  
2 Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

3 FOR AMERICAN INTERNATIONAL  
4 SPECIALITY LINES INSURANCE COMPANY

5  
6 10/17/00

7 Date

8 Signature: 

9 Name (print): James M. Filleman, Jr.

10 Title: Vice President

11 Address: \_\_\_\_\_

12 175 Water Street

13 New York, NY 10038

14  
15  
16 Agent Authorized to Accept Service on Behalf of Above-signed Party:

17  
18 Name (print): Karl M. Swanson

19 Title: Division Attorney

20 Address: 175 Water St., 12<sup>th</sup> Floor

21 New York, N.Y. 10038

22  
23  
24 Ph. Number: (212) 453-6219

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.  
2 Iron Mountain Mines, Inc., et al., relating to the Iron Mountain Mine Superfund Site.

3  
4 THE IT GROUP, INC.

5 17 Oct. '00  
6 Date

Signature: Anthony J. DeLuca  
Name (print): Anthony J. DeLuca

7 Title: Chief Executive Officer and President

8 Address: 2790 Mosside Boulevard  
9 Monroeville, PA 15146

10  
11 Agent Authorized to Accept Service on Behalf of Above-signed Party:

12 Name: The Corporation Trust Company  
13 1209 Orange Street  
14 Wilmington, DE 19801  
15 Phone Number: (302) 658-7581  
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IT CORPORATION

17 Oct '00  
Date

Signature Anthony J. DeLuca  
Name (print): Anthony J. DeLuca

Title: Chief Executive Officer and President

Address: 2790 Mosside Boulevard  
Monroeville, PA 15146

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017  
Phone Number: (213) 627-8252

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IT ADMINISTRATIVE SERVICES, LLC

17 OCT. '00  
Date

Signature:   
Name (print): James M. Redwine

Title: Vice President

Address: 2790 Mosside Boulevard  
Monroeville, PA 15146


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801  
Phone Number: (302) 658-7581

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IT IRON MOUNTAIN OPERATIONS, LLC

17 OCT '00  
Date

Signature:   
Name (print): James M. Redwine  
Title: Vice President

Address: 2790 Mosside Boulevard  
Monroeville, PA 15146

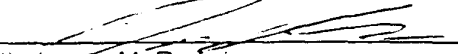
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801  
Phone Number: (302) 658-7581

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IRON MOUNTAIN MINE REMEDIATION TRUST I  
By: IT Administrative Services, LLC, Trustee

17 OCT. '00  
Date

Signature:   
Name (print): James M. Redwine  
Title: Vice President

Address: 2790 Mosside Boulevard  
Monroeville, PA 15146

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801  
Phone Number: (302) 658-7581

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IRON MOUNTAIN MINE REMEDIATION TRUST II  
By: IT Administrative Services, LLC, Trustee

17 OCT. '00  
Date

Signature:   
Name (print): James M. Redwine

Title: Vice President

Address: 2790 Mossdale Boulevard  
Monroeville, PA 15146

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801  
Phone Number: (302) 658-7581