

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

Jack's Creek/Sitkin Smelting Site
Mifflin County, Pennsylvania

Proceeding under Section 122(g)(4)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended
("CERCLA") 42 U.S.C. § 9622(g)(4)

EPA Docket No. III-94-40-DC

2.85¹²⁰

ADMINISTRATIVE ORDER
BY CONSENT

DE MINIMIS SETTLEMENT

ADMINISTRATIVE ORDER BY CONSENT

*1-16-96 203-26 P-2W
1-19-96 203-26 (1-13-95) STG B03W62W*

*De minimis Election - 1-1-96
Due 1-16-96 (30 days) 92
7-19-96 (if making 2 payments)*

*1-19-96
collected 2 payments - 92
1-19-96 (if making 2 payments)*

TABLE OF CONTENTS
ADMINISTRATIVE ORDER BY CONSENT
JACK'S CREEK/SITKIN SMELTING SITE

I.	JURISDICTION	1
II.	STATEMENT OF PURPOSE.....	2
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS.....	4
V.	EPA'S STATEMENT OF FACTS.....	7
VI.	EPA'S DETERMINATIONS.....	10
VII.	ORDER.....	11
VII.A.	SETTLEMENT WITH BROKERS/GENERATORS.....	12
VII.B.	NATURAL RESOURCES DAMAGES.....	14
VIII.	PAYMENT BY <u>DE MINIMIS</u> SETTLORS.....	14
IX.	CIVIL PENALTIES.....	17
X.	CERTIFICATION OF <u>DE MINIMIS</u> SETTLORS.....	17
XI.	COVENANTS NOT TO SUE BY EPA AND DOI.....	18
XII.	RESERVATION OF RIGHTS.....	19
XIII.	COVENANTS BY <u>DE MINIMIS</u> SETTLORS..	20
XIV.	CONTRIBUTION PROTECTION.....	21
XV.	APPENDICES.....	22
XVI.	OPPORTUNITY FOR PUBLIC COMMENT.....	23
XVII.	ATTORNEY GENERAL APPROVAL.....	23
XVIII.	COSTS AND FEES.....	24
XIX.	EFFECTIVE DATE.....	24

I. JURISDICTION

1.1 THIS ADMINISTRATIVE ORDER BY CONSENT ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, ("CERCLA") as amended, 42 U.S.C. § 9622(g)(4), to reach de minimis settlements in actions under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2,923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (Sept. 13, 1987).

1.2 This Consent Order concerns the reimbursement of response costs which have been or which may be incurred by the United States in responding to releases or threatened releases of hazardous substances at the Jack's Creek/Sitkin Smelting Site in Mifflin County, Pennsylvania (hereinafter the "Jack's Creek Site" or the "Site," more specifically identified on the Site map attached as Appendix A.

1.3 This Consent Order is entered into voluntarily by and between the EPA and each of the de minimis potentially responsible parties listed in Appendix B who have executed the attached signature pages which shall include the de minimis Respondents and the de minimis Settling Federal Agencies. Each

de minimis Settlor agrees to undertake all actions required by the terms and conditions of this Consent Order. Each de minimis Settlor consents to and will not contest EPA's jurisdiction to issue and enter into this Order or to enforce its terms.

1.4 This Consent Order was negotiated and executed by EPA and the de minimis Settlers in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order.

1.5 EPA and the de minimis Settlers agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in the Order. The participation of the de minimis Settlers in this Order shall not be considered an admission of liability and shall not be admissible in evidence against the de minimis Settlers in any judicial or administrative proceeding other than in proceedings to implement or enforce this Order or a judgment relating to it.

II. STATEMENT OF PURPOSE

By entering into this Consent Order, the mutual objectives of the EPA and the de minimis Settlers are:

A. to reach agreement between EPA and the de minimis Settlers which allows each Settlor to make a cash payment, including a premium as specified herein, toward response costs that the EPA has incurred or may incur at or in connection with

the Site, including claims for natural resource damages under the trusteeship of the Department of Interior ("DOI") (if the payment described in paragraph VII.A is made), in exchange for a covenant not to sue as is provided in Section XI of this Order thereby avoiding difficult, prolonged and complicated litigation among EPA, the de minimis Settlers and other responsible parties;

B. to simplify the remaining enforcement activities concerning the Site by eliminating a substantial number of parties from further involvement in the case;

C. to reimburse the Hazardous Substance Superfund for a portion of the response costs incurred or to be incurred in connection with the Site without waiving EPA's assertion of joint and several liability against parties other than the Respondents.

III. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon EPA, DOI and the de minimis Settlers and their successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the party he or she represents. Any change in ownership, corporate or other legal status of any Settlor, including, but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of any of the Settlers under this Consent Order.

B. In the event that any Settlor files for bankruptcy or is placed involuntarily in bankruptcy proceedings, prior to the date on which such Respondent fulfills the payment obligations required by Section VIII and IX (if applicable) herein, such Respondent shall notify EPA within three (3) days of such filing or involuntary commencement of bankruptcy proceedings.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Order, including the appendices attached hereto, the following definitions shall apply:

A. "Administrative Order By Consent" shall mean this "Consent Order" or "Order" and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

C. "Commonwealth" or "State" shall mean the Commonwealth of Pennsylvania.

D. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other

than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

E. "De Minimis Respondents" shall mean all non-federal de minimis parties listed in Appendix B, who have executed the attached signature pages.

F. "DOI" shall mean the United States Department of the Interior, and any successor departments or agencies of the United States.

G. "De Minimis Settling Federal Agencies" shall mean all Federal Agencies listed in Appendix B, who have executed the attached signature pages.

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

I. "Future Response Costs" shall mean any further response costs, including but not limited to direct and indirect costs, including recoverable costs of oversight of removal or remedial actions, that may be incurred by EPA at the Site and which are not included on the cost summary attached hereto as Appendix "F".

J. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C.

§ 9605, as set forth at 55 Fed. Reg. 8,666 (Mar. 8, 1990), and codified at 40 C.F.R. Part 300, including any amendments thereto.

K. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral or an upper case letter.

L. "Past Response Costs" shall mean all response costs, including but not limited to, direct and indirect costs that EPA has incurred and paid and which are reflected in the cost summary report attached hereto as Appendix F.

M. "Record of Decision" or "ROD" shall mean the EPA Record of Decision, not yet issued, relating to the Site.

N. "Remedial Action" shall mean those activities, except for Operation and Maintenance, which EPA will undertake, or which one or a group of potentially responsible parties will undertake in cleaning up the Site, and which will be set forth in the upcoming ROD.

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

P. "Settlors" or "de minimis Settlor" shall mean all de minimis parties listed in Appendix B who have executed the attached signature pages comprising the "De Minimis Respondents", and their officers, directors, employees and agents, to the extent that the liability of said individuals is derived from the liability of the Settlor for the same cause of action, their successors and assigns, and "De Minimis Settling Federal

Agencies", their successors and assigns.

Q. "Site" shall mean the Jack's Creek/Sitkin Smelting Superfund Site, including areas defined in 40 C.F.R. § 300.400(e), encompassing 105 acres, located approximately 1/2 mile west of Maitland, Mifflin County, Pennsylvania and more particularly identified on the map attached as Appendix A.

R. "Total Response Costs" shall mean the sum of the Past and Future Response Costs incurred and to be incurred at the Site.

S. "United States" shall mean the United States of America, its agencies, departments and instrumentalities.

T. "Final Volumetric Ranking Summary" shall mean the list prepared by EPA for the Site of all parties' volumetric share including cost share and premium, attached as Appendix C.

V. EPA'S STATEMENT OF FACTS

5.1 The Jack's Creek Site is a 105-acre metals reclamation facility located approximately 1/2 mile west of Maitland, Mifflin County, Pennsylvania. The Site is located on the 100-year floodplain of Jack's Creek and is bordered by Jack's Creek on the north and Maitland Road on the south. An adjacent plant lies northwest of the Site and a home and a church are located to the east. The Site is more particularly identified on the map attached as Appendix A.

5.2 The Site operated as a former nonferrous metal smelting

and precious metal reclamation facility from 1958 until 1977. A portion of the Site is still used for a metal scrap yard operation.

5.3 Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA proposed the Site for listing on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, in June 1988 by publication in the Federal Register. Final listing was in October 1989.

5.4 On August 28, 1990, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the National Contingency Plan ("NCP").

5.5 The final FS, submitted in November 1993, identified the following types of contamination: inorganic contamination, pesticides, dioxins, PCB contamination, and semi-volatile contamination.

5.6 EPA has not yet issued a proposed plan for remedial action pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, upon which the Record of Decision will be based.

5.7 In performing the required response actions at the Site, EPA has incurred and will continue to incur response costs at or in connection with the Site. As of July 26, 1994, EPA has incurred \$5,376,424.45 in Past Response Costs, excluding prejudgment interest, which still remains unreimbursed. EPA will

incur Future Response Costs at the Site. EPA anticipates approximately \$38 million will be spent in the future on Site remediation.

5.8 EPA has reviewed records describing the transactions of the potentially responsible parties, including the de minimis Settlers, in relation to the Site. These records include information describing the amount and nature of materials contributed to the Site. Based upon that review, EPA has determined that each de minimis Settlor listed in Appendix B arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of a hazardous substance owned or possessed by such de minimis Settlor, at the Site.

5.9 Information currently known to EPA indicates that each de minimis Settlor listed in Appendix B contributed between 10,000 and 1,000,000 lbs. of scrap materials which contained hazardous substances to the Site, and that the toxic or other hazardous effects of the hazardous substances contributed by each de minimis Settlor to the Site are not significantly more toxic than the other hazardous substances at the Site. Attached hereto and incorporated by reference is the Final Volumetric Ranking Summary ("VRS") which is listed as Appendix C and lists the estimated volume of scrap materials containing the hazardous substances contributed to the Site by each de minimis Settlor, as well as the total estimated volume of scrap materials containing hazardous substances received and processed at the Site.

5.10 Payment required to be made by each de minimis Settlor pursuant to this Consent Order is a minor portion of the Total Response Costs at the Site. Total Response Costs include both past and projected future costs and are estimated to be approximately \$43,376,424.45.

5.11 EPA has identified persons other than the de minimis Settlers who owned or operated the Site, or who arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of a hazardous substance owned or possessed by such persons.

VI. EPA'S DETERMINATIONS

Based upon EPA's Statement of Facts set forth above, and upon the administrative record for this Site, EPA has determined that:

6.1 The Jack's Creek/Sitkin Smelting Site is a "facility" as the term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6.2 Each de minimis Settlor is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6.3 Each de minimis Settlor is a potentially responsible party within the meaning of § 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

6.4 The materials sent to the Site include "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42

U.S.C. § 9601(14).

6.5 The past, present or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

6.6 The Past Response Costs incurred and Future Response Costs to be incurred in connection with the Site are removal and remedial response costs within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

6.7 Prompt settlement with the de minimis Settlers is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

6.8 As to each Settlor, this Consent Order involves only a minor portion of the response costs at the Site pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

6.9 Each Settlor is eligible for a de minimis settlement pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A), since both the amount and toxic or other hazardous effects of the hazardous substance(s) contributed to the Site by each de minimis Settlor is minimal in comparison to the other hazardous substances at the Site.

VII. ORDER

Based upon the foregoing Statement of Facts and Determinations by EPA, and in order to reach an expedited de

minimis settlement in connection with the Jack's Creek Site, in consideration of, and in exchange for, the promises, mutual undertakings, and covenants set forth herein, and intending to be legally bound hereby, EPA and the de minimis Settlers agree, and the EPA hereby Orders, that the de minimis Settlers shall pay their cost share as set forth below:

1. Each de minimis Settlor shall pay its volumetric share of the cost basis (column marked "Total Cost Share" in Appendix C) of \$43,376,424.45 (EPA's past response costs and total estimated future costs); and

2. Each de minimis Settlor shall pay a settlement premium equal to 50% of the de minimis Respondent's volumetric share of \$38,000,000 (EPA's total estimated future costs). The premium shall cover the risk of cost overruns or that conditions at the Site previously unknown to EPA are discovered after the effective date of this Consent Order, or information previously unknown to EPA is received, in whole or in part, after the effective date of this Consent Order, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

VII.A. SETTLEMENT WITH BROKERS/GENERATORS

1. The volumetric share assigned to each Settlor on Appendix C reflects EPA's best estimate of the total volume of

material sent to the site with which that Settlor is connected. Accordingly, where two Settlers are connected with the same shipment (as, for example, where generator A used broker B to arrange for delivery of some or all of its material to the site), that shipment is included in the volumetric share of both Settlers and is hereinafter referred to as the "common volume." In such a case, each Settlor is responsible to pay the entire share assigned to it; but, by written agreement of the Settlers involved, some or all of the payment attributable to the common volume and made by one of the Settlers may be credited toward the shares of both Settlers. By way of illustration, not limitation, if an amount of \$1000 representing a common volume of 800 lbs is included in the shares of both generator A and broker B, those parties may by agreement between themselves each pay \$500 and specify that the payment is to be credited toward its own share and the share of the other party. Thus, the entire \$1000 attributable to the common volume will be paid and A and B will each get credit for the full \$1000. Where Settlers wish such treatment they must submit with their payments a written request for same and a copy of the written agreement described above.

2. Each Settlor fitting the description of Section VII.A.1., above, shall submit its payment in compliance with Sections VII.1. and VII.2, above.

VII.B. NATURAL RESOURCES DAMAGES

Each de minimis Settlor wishing to resolve its potential liability to DOI for injury to, destruction of or loss of natural resources and the cost of assessing such injury, destruction or loss may do so as follows:

1. Each de minimis Settlor shall pay its volumetric share of the DOI cost basis (column marked "DOI Payment") of \$2,245,000.

VIII. PAYMENT BY DE MINIMIS SETTLORS

8.1 Within one hundred and eighty (180) calendar days of the effective date of this Consent Order, each Settlor shall pay the amount under the column marked "EPA Total" specified for that party as set forth in Attachment C to this Consent Order and as specified in Sections VII and VII.B., above. If any Settlor wishes to resolve its potential liability to DOI for injury to, destruction of, or loss of natural resources and the cost of assessing such injury, destruction, or loss, then that Settlor, in addition to paying the amount listed under the column marked "EPA Total", shall pay, within one hundred and eighty (180) calendar days of the entry of this Consent Order, the amount listed under the column marked "DOI Payment" specified for that party as set forth in Attachment C to this Consent Order and as specified in Section VII.B., above. If a Settlor is paying both the "EPA Total" and the "DOI Payment", the sum of these amounts

is reflected in the column marked "Grand Total" specified for that party as set forth in Attachment C to this Consent Order.

Each Settlor shall remit a cashier's, certified, or U.S. Treasury check for its cost share as specified in Sections VII, and if applicable, VII.B. above, made payable to the "EPA-Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from one calendar day following the date payment is due. Checks should specifically identify the Jack's Creek/Sitkin Smelting Site Special Account, the EPA Region, the CERCLA Site/Spill ID Number 032W, and the docket number of this Order and be forwarded to:

United States Environmental Protection Agency,
Region III
Attention: Superfund Accounting, P.O. Box 360515,
Pittsburgh, PA 15251-6515.

Payments received by EPA pursuant to this Consent Order for amounts due under the "EPA Total" column shall be retained by EPA and shall be applied first towards reimbursing the Hazardous Substance Superfund for Past Response Costs incurred at or in connection with the Site. Costs incurred first shall be reimbursed first. If the aggregate payments received by EPA from Settlers exceed the Past Response Costs amount, then any amount which exceeds the Past Response Costs shall be retained by EPA and shall be used by EPA, or by a party designated by EPA, to conduct or finance the response action at the Site.

Payments received by EPA pursuant to this Consent Order for

amounts due under the "DOI Payment" column shall be transferred by EPA from the Jack's Creek/Sitkin Smelting Special Account to the Department of the Interior.

8.2 When sending the certified or treasury check referred to in paragraph 8.1 above, each de minimis Settlor shall also send a copy of its check along with the transmittal letter(s) to:

EPA Regional Docket Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

and

Bowen Hosford (3HW11)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

8.3 Any Settlor may make payment in two equal installments, the first due and payable within one hundred and eighty (180) calendar days of the effective date of this Consent Order and the second due and payable within one year of the effective date of the Consent Order.

8.4 Amounts due and owing pursuant to the terms of this Consent Order but not paid in accordance with the terms of this Consent Order shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

8.5 With respect to the Settling Federal Agencies, any requirement for the payment or obligation of funds by Settling Federal Agencies established pursuant to the terms of this

Consent Order shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, and 1511-1519. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

IX. CIVIL PENALTIES

In addition to any other remedies or sanctions available to EPA, any de minimis Settlor who fails or refuses to comply with any term or condition of this Consent Order shall be liable for up to \$25,000 in penalties per day for each failure or refusal to comply pursuant to CERCLA § 122(1), 42 U.S.C. § 122(1) to the extent permitted by law.

X. CERTIFICATION OF DE MINIMIS SETTLORS

Each de minimis Settlor certifies individually that, to the best of its knowledge and belief, it has conducted a good faith search for documents concerning the Site and has fully and accurately disclosed to EPA all materially significant information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the generation, treatment, transportation

or disposal of hazardous substances at, or in connection with the Site. If this certification is subsequently determined to be false or materially inaccurate, such de minimis Settlor shall forfeit all payments made pursuant to Section VII of this Consent Order and the Covenant Not to Sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from such de minimis Settlor's false or materially inaccurate certification.

XI. COVENANTS NOT TO SUE BY EPA AND DOI

11.1 Subject only to the rights reserved in Section XII (Reservation of Rights) of this Consent Order and upon receipt of payment from a de minimis Settlor of the amount specified in Sections VII and, if applicable, VII.B of this Consent Order, the EPA and DOI covenant not to sue or to take any other civil or administrative action against such de minimis Settlor for civil liability for reimbursement of response costs or for injunctive relief pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), or for injunctive relief pursuant to Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, with regard to the Site.

11.2 EPA's and DOI's Covenant Not to Sue is conditioned upon the complete and satisfactory performance by each de minimis Settlor of its respective obligations under this Consent Order.

These covenants not to sue extend only to the de minimis Settlers and do not extend to any other person.

11.3 If payment under VII.A is made by only one party of the Broker/Generator pair, the covenant not to sue described in 11.1 and 11.2, above, shall be effective only for the party rendering payment.

XII. RESERVATION OF RIGHTS

12.1 The EPA and DOI expressly reserve, and nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for, any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which EPA or DOI may have against any of the de minimis Settlers for:

- (1) Any liability as a result of failure to make the payments required by Section VII and VII.A, or otherwise comply with the terms of this Consent Order;
- (2) liability for damages for injury to, destruction of or loss of natural resources and the reasonable cost of assessing such injury, destruction or loss except that once a particular Settlor has paid its allocated "DOI payment" as shown on Attachment C and that amount is paid to DOI pursuant to Section VII.B., this subparagraph 2 shall be ineffective as to that Settlor;
- (3) criminal liability;

(4) any liability for any claim or cause of action not expressly included within Section XI, above;

12.2 Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the EPA and DOI, to seek or obtain further relief from any Respondent, and the covenant not to sue set forth above and the contribution protection provided below will become null and void as to any individual Settlor, if:

(1) Such de minimis Settlor contributed greater than 1,000,000 lbs. of the materials containing hazardous substances at the Site or contributed hazardous substances which contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site; and/or

(2) Such de minimis Settlor's certification in Section X of this Order is false or materially inaccurate.

12.3 Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

XIII. COVENANTS BY DE MINIMIS SETTLORS

Settlers hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, its

contractors, employees, and authorized representatives, with respect to the Site or this Consent Order, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, related to the Past Response Costs, or any claims arising out of response activities at the Site. Nothing in this Consent Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIV. CONTRIBUTION PROTECTION

14.1 Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order. Nothing in this Order affects or limits any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

14.2 If Settlor exercises its payment option under VII.B., EPA and DOI agree that each Settlor by entering into and complying with the terms of this Consent Order, will have resolved its liability for matters addressed in this Consent Order and is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 113(f)(2) and 9622(g)(5) and therefore, shall not be liable for claims for contribution barred by those sections.

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

XV. APPENDICES

The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is the map of the Site.

"Appendix B" is the complete list of the de minimis Respondents and de minimis Settling Federal Agencies.

"Appendix C" is the Volumetric Ranking Summary.

"Appendix D" is a list of Broker Settlers.

"Appendix E" is a list of Generator Settlers.

"Appendix F" is the Past Response Costs summary report.

XVI. OPPORTUNITY FOR PUBLIC COMMENT

This Administrative Order By Consent shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

In accordance with CERCLA Section 122(g)(4), 42 U.S.C. § 9622(g)(4), this Consent Order shall not become effective without prior written approval of the Assistant Attorney General for the Environment and Natural Resources Division.

XVIII. COSTS AND FEES

Settlors shall bear their own costs and attorneys' fees regarding this action.

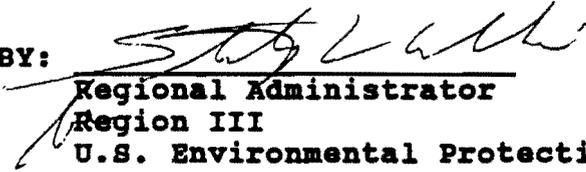
XIX. EFFECTIVE DATE

The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Settlers that the Assistant Attorney General has approved the Consent Order in accordance with Section XVII, above, and that the public comment period pursuant to Section XVI of this Consent Order has closed and that comments received, if any, do not require modification of, or EPA withdrawal from this Consent Order.

Jack's Creek/Siphan Smelting Site
Administrative Order By Consent
U.S. EPA Docket No. III-94-40-DC

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY:


Regional Administrator
Region III
U.S. Environmental Protection
Agency

Date:

9/30/94

Jack's Creek/Slidin Smelting Site
Administrative Order By Consent
U.S. EPA Docket No. M-94-40-DC

APPROVED IN ACCORDANCE WITH SECTION 122(g)(4) OF CERCLA:

BY:



Lois J. Schiffer

Assistant Attorney General
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