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VIA MESSENGER

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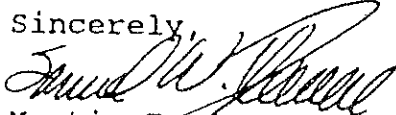
Re: Atlas Mine Proposed Settlement

Dear Richard:

Enclosed is the latest markup of the proposed settlement agreement between BLM and Atlas and VMMC. We have included a "red-lined" form as well as an unmarked version which incorporates the changes shown on the red-lined draft. The changes made in this draft primarily concern resolution of EPA/BLM disputes.

If these changes are satisfactory, please let us know and we will continue the settlement approval process at the Department of Justice and the Department of Interior. Although we can make no assurances regarding approval, we have endeavored throughout our settlement discussions to anticipate problems that may arise during the DOJ and DOI settlement approval processes.

If you would like to discuss this matter further, please feel free to contact us.

Sincerely,  
  
Martin E. McDermott  
Samuel W. Plauche  
Attorney, Environmental  
Defense Section

Enclosures

cc: Temi Berger, Esq.  
Regional Solicitor's Office  
U.S. Department of Interior  
(without red-line)

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

A WHEREAS, the Atlas Mine Area Operable Unit (referred to herein as the Site) of the Atlas Asbestos Mine Superfund Site (Atlas Mine Site) located in Fresno County, California is an approximately 1.8 square kilometer (450 acre) tract of land located in the upper White Creek Watershed just south of the San Joaquin Ridge in the southern Diablo Mountains, Sections 31 and 32, Township 18 South, Range 13 East, in western Fresno County, California. All but approximately ten (10) acres of the Site are public lands under the jurisdiction of the Bureau of Land Management, Department of the Interior, United States of America (BLM). An asbestos mining and milling operation was conducted by Atlas Corporation (Atlas), and subsequently others, including a partnership in which Vinnell Mining & Minerals Corporation (VMMC) was a partner, at the Mine Area OU from approximately 1962 to 1979.

B WHEREAS, pursuant to Section 105(8), 42 U.S.C. § 9605(8), of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (CERCLA), the United States Environmental Protection Agency (EPA) placed the Atlas Mine Site on the National Priorities List (NPL) on September 21, 1984;

C WHEREAS, in response to an alleged release or substantial threat of a release of a hazardous substance at or

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from the Site, EPA commenced on July 9, 1985, a Remedial Investigation and Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.68, and completed the RI/FS on March 19, 1990;

D WHEREAS, on April 11, 1990, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA issued a public notice concerning EPA's proposed remedial action for the Site and opened a public comment period;

E WHEREAS, the decision by EPA on the remedial action to be implemented at the Mine Area OU is embodied in a final Record of Decision (ROD), dated February 14, 1991;

F WHEREAS, VMMC and Atlas have entered into a Consent Decree (EPA Consent Decree) with EPA entered on the 13th day of August, 1992 (by agreement with EPA the date of entry as it relates to dates by which VMMC and Atlas must perform tasks is September 3, 1992), in the U.S. District Court for the Eastern District of California, Docket # 1-92-CV-5373 OWW, wherein VMMC and Atlas have agreed to perform the remedial action for the Site as contained in the ROD, including, among other tasks, design, implement and maintain the cleanup and/or remediation of the Site in accordance with the terms of the EPA Consent Decree;

G WHEREAS, VMMC and Atlas have filed a complaint in United States District Court for the District of Columbia (Case No. CV 91-1324 JHG) for contribution and cost recovery pursuant to CERCLA seeking to recover response costs from BLM that allegedly have been and will be incurred by VMMC and Atlas in response to releases and threatened releases of hazardous

substances from the Site for which VMMC and Atlas are responsible under the terms of the EPA Consent Decree;

H WHEREAS, BLM has filed a counterclaim against VMMC and Atlas pursuant to CERCLA for recovery of response costs that it has allegedly incurred in its response to releases and threatened releases of hazardous substances from the Site;

I WHEREAS, VMMC and Atlas and BLM hereby enter into this Settlement Agreement wherein BLM agrees to assume certain of the duties and responsibilities that VMMC and Atlas agreed to perform in the EPA Consent Decree, as expressly set forth in the provisions of this Settlement Agreement (the BLM Assumed Work, as specifically defined hereinafter). To the extent specifically incorporated herein, the terms of the EPA Consent Decree are incorporated into this Settlement Agreement, and the EPA Consent Decree is attached hereto as Appendix A;

J WHEREAS, VMMC and Atlas and BLM (each a Party and collectively the Parties) recognize that implementation of this Settlement Agreement will avoid prolonged and complicated litigation between the Parties, and that its execution is in the public interest; and

K WHEREAS, the Parties agree that this Settlement Agreement has no application to, and the execution of this Settlement Agreement does not constitute and shall not be construed to constitute an admission or acknowledgment by any Party of any liability or responsibility for the so-called City

of Coalinga Operable Unit, the Ponding Basin at the California Aqueduct or the Clear Creek Management Area;

NOW THEREFORE, it is AGREED as follows:

I RESERVED

II PARTIES

The Parties hereto are the United States of America, through the United States Department of the Interior, Bureau of Land Management, and Atlas and VMMC.

III BINDING EFFECT

This Settlement Agreement shall apply to and be binding upon Atlas and VMMC, their officers, directors, officials, successors, and assigns (all of the foregoing acting in their representative capacities only), and upon BLM, and upon all persons, contractors, and consultants acting under or for VMMC and Atlas and/or BLM in this case only. No change in ownership, organization or corporate or partnership status will in any way alter the Parties' responsibilities hereunder. The Parties are responsible for and will remain responsible for carrying out all activities for which they assume responsibility under this Settlement Agreement. The Parties shall provide a copy of this Settlement Agreement and shall provide all relevant additions thereto as appropriate, to each person, including all contractors and subcontractors, at the time any such person is retained to

perform the Work contemplated by this Settlement Agreement and shall condition any contract for the Work upon compliance with this Settlement Agreement. The Parties shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

The willingness of the Parties to perform the Work described herein does not obligate them to perform any Work at any other operable unit of this Site.

#### IV DEFINITIONS

Unless otherwise expressly provided herein or below, terms used in this Settlement Agreement which are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meaning assigned to them in the statute or regulations. Whenever terms listed below are used in this Settlement Agreement, or in Appendix D, the following definitions shall apply:

- A "Appendix A" shall mean the EPA Consent Decree.
- B "Appendix B" shall mean the ROD.
- C "Appendix C" shall mean the Scope of Work (SOW) for the Mine Area Operable Unit.
- D "Appendix D" shall mean the Access Agreement between the Parties.
- E "Atlas" shall mean Atlas Corporation, including all divisions, subdivisions and other forms and components of Atlas Corporation.



- F "BLM Assumed Work" shall mean and be limited to those portions of the Work that BLM has explicitly agreed to assume, as set forth in Section VII of this Settlement Agreement.
- G "Contractor" shall mean the individual, company or companies retained by or on behalf of any of the Parties to undertake and complete the Remedial Action.
- H "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 legal holiday. In computing any period of time hereunder where the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next working day.
- I "DTSC" shall mean the California Department of Toxic Substances Control.
- J "Future Liability" shall mean liability arising after EPA's Certificate of Completion is issued pursuant to Section XXXIX (Certification of Completion) of the EPA Consent Decree.
- K "National Contingency Plan" or "NCP" shall refer to the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and shall be used as that term is referred to in Section 105 of CERCLA, 42 U.S.C. § 9605, including any amendments thereto.

- L "Mine Area OU" or the "Site" means the area defined in the ROD as the Atlas Mine Area Operable Unit. The term "Site" as used and defined in this Decree does not include the City of Coalinga Operable Unit, the Ponding Basin or the Clear Creek Management Area.
- M "Future Oversight Costs" shall mean all oversight costs, including but not limited to, indirect costs, that EPA incurs or has incurred after the date of lodging of the EPA Consent Decree in overseeing the Work, including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, costs incurred in connection with Section X (Periodic Review to Assure Protection of Human Health and the Environment) of the EPA Consent Decree, and the costs of reviewing or developing plans, reports and other items pursuant to the EPA Consent Decree, verifying the Work, and other similar tasks.
- N "Future Response Costs" shall mean all costs not inconsistent with the NCP incurred by EPA after the date of lodging of the EPA Consent Decree for any activities outlined in Section VII (Work To Be Performed), Section VIII (Additional Work), and Section X (Periodic Review) of the EPA Consent Decree and this Settlement Agreement, but not including Future Oversight Costs. Future Response Costs shall also include, but are not limited to, direct and indirect

costs incurred by EPA, and the United States Department of Justice on behalf of EPA, in implementing or enforcing the EPA Consent Decree.

- O "Interest" shall mean interest as established pursuant to Section 107(a) of CERCLA.
- P "Performance Standards" shall mean those cleanup and/or remediation standards, standards of control, and other substantive requirements, criteria, or limitations set forth in the ROD and the SOW.
- Q "VMC" shall mean Vinnell Mining and Minerals Corporation, including all divisions, subdivisions and other forms and components of Vinnell Mining and Minerals Corporation.
- R "Remedial Action Work" shall mean the phases of the Work involving the construction of the remedy in accordance with the Remedial Design documents, the ROD, the EPA Consent Decree and this Settlement Agreement.
- S "Remedial Action Reports" shall mean the reports developed by the Parties in compliance with the EPA Consent Decree and this Settlement Agreement, detailing the Work and the results of the Remedial Action implementation.
- T "Remedial Design Work" shall mean the phases of the Work wherein engineering plans and technical specifications are developed for implementation of the

Remedial Action, in accordance with the ROD, the EPA Consent Decree and this Settlement Agreement.

- U "Remedial Design Reports" shall mean the reports developed by the Parties in compliance with the EPA Consent Decree and this Settlement Agreement detailing the Work and the results of the Remedial Design at the four phases described in the EPA Superfund Remedial Design and Remedial Action Guidance, dated June 1986 (RD/RA guidance).
- V "Scope of Work" or "SOW" shall mean the scope of work for implementation of the Remedial Design, Remedial Action and operation and maintenance of the Remedial Action at the Site, as set forth in Appendix C hereto.
- W "Remedy O&M" shall mean the direct costs of operations and maintenance of the remedy contained in the EPA Consent Decree and the ROD.
- X "BLM Remedy O&M" shall mean the subset of the Remedy O&M for which BLM assumes responsibility under the terms of this Settlement Agreement.
- Y "Atlas/VMMC Remedy O&M" shall mean all Remedy O&M for which BLM has not assumed responsibility under the terms of this Settlement Agreement.
- Z "State" shall mean the State of California.
- AA "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant" or "contaminant" under

claims by the Parties with regard to this Site, as those claims are set forth in the Complaint and Counterclaim filed with respect to this matter in the United States District Court for the District of Columbia, Civ. No. CV-91-1321.

## VI RESERVED

## VII WORK TO BE PERFORMED

### A General Responsibilities Regarding the Remedial Actions

1 Subject to the conditions set forth herein, and in the applicable provisions of the EPA Consent Decree, the ROD, and the SOW, and any modifications thereto, as well as in all applicable design specifications, Work Plans, and other plans and schedules approved by EPA (the applicable provisions of which are hereby incorporated by reference and made a part hereof), the parties shall, according to their assumed responsibilities and duties, perform, at their expense, the implementation of that Work required as provided herein.

2 BLM shall appoint a representative (a Project Coordinator) designated by it to act on its behalf to coordinate the execution of the BLM Assumed Work with the Project Coordinator appointed by VMMC and Atlas under the provisions of the EPA Consent Decree.

3 The Parties shall perform their respective Work for the Site as agreed herein in accordance with all of the applicable provisions of the EPA Consent Decree, this Settlement

Section 101(33) of CERCLA, 42 U.S.C. § 9601(33);  
(3) any "hazardous waste" under Section 1004(5) of  
RCRA, 42 U.S.C. § 6903(5).

BB "Work" shall mean the implementation, in accordance with Section VII (Work to be Performed), Section VIII (Additional Work), and Section X (Periodic Review) of the EPA Consent Decree, Section VII (Work to be Performed), Section VIII (Additional Work), and Section X (Periodic Review) of this Settlement Agreement, the ROD and the SOW, as defined herein and in the EPA Consent Decree, and as may be modified pursuant to the provisions of the EPA Consent Decree, this Settlement Agreement and any schedules or plans required to be submitted pursuant thereto.

CC "Workplan" or "workplans" shall mean a workplan developed by the Parties, or any of them, which details the Work to be conducted pursuant hereto and to the EPA Consent Decree.

#### V PURPOSE

The purposes of this Settlement Agreement are: (1) to establish the CERCLA responsibilities that the Parties agree to perform at the Site (which responsibilities are described and defined hereinafter) and to set forth the procedures and parameters for accomplishing those responsibilities, as well as the respective rights of the Parties; and (2) to settle all

b Road Maintenance - BLM will be responsible for road paving or implementing an appropriate engineering alternative for the White Creek Road traversing the Site as required by the EPA Consent Decree and the ROD.

c Fence Repair and Maintenance - BLM will repair, maintain, and (if required by EPA) replace the existing fence around the Site in accordance with the requirements of the EPA Consent Decree. In the event that EPA requires expansion of the existing fence or construction of new fencing elsewhere on the Site, Atlas and VMMC shall be solely responsible therefor.

d Patrolling and Monitoring - BLM will patrol and monitor the Site (including all remedial facilities to be constructed) on a monthly basis (or as otherwise required by EPA). BLM's patrolling and monitoring will be limited to inspection, recording and reporting of the following information to the Parties and EPA:

- (i) Physical (external) conditions of ditches, diversion channels, culverts, dams, retaining structures, access roads, fences, gates, signage and other remedial facilities.
- (ii) Capacity of sediment containing structures.
- (iii) General condition of natural drainages and slopes which may by natural forces, fail or erode or by

Agreement, and in accordance with the applicable provisions of the ROD, the SOW, and any modifications thereto, as well as all applicable design specifications, Work Plans, and other Plans and Schedules approved by EPA. The applicable provisions of the ROD, the SOW, and all modifications to the SOW, as well as all applicable EPA approved design specifications, Work Plans and other plans and schedules are hereby expressly incorporated by reference and made a part of this Settlement Agreement. In the event of any conflict between this Settlement Agreement and the EPA Consent Decree or any EPA-approved document incorporated into this Settlement Agreement, the terms of the EPA approved document and the EPA Consent Decree shall control.

4 Section VII (Work to be Performed), Section VIII (Additional Work) and Section X (Periodic Review) of the EPA Consent Decree are hereby expressly incorporated herein and BLM hereby agrees to undertake the following responsibilities implementing certain elements of the selected remedy for the Site set forth in said incorporated Sections and the ROD as follows (which responsibilities shall encompass and define the "BLM Assumed Work" for purposes of this Settlement Agreement):

a Revegetation Project - BLM will assume responsibility for conducting the revegetation pilot study described in the EPA Consent Decree, and any implementation of revegetation that EPA requires pursuant to the EPA Consent Decree.



other means impact on the remedial action structures and facilities.

- (iv) Review of Site for evidence of trespass.
- (v) Such other objective information as EPA may require.

It is expressly provided, however, that in no event shall BLM's patrolling and monitoring responsibility (described above in (i) through (v)) require a level of technical knowledge or expertise beyond that of a reasonable layman. Atlas and VMMC agree that they are responsible for performing all substantive (i.e., requiring a level of technical knowledge or expertise beyond that of a layman) inspections and evaluations of the remedial facilities and structures and Site conditions created or impacted by the remedial facilities constructed by Atlas and VMMC, in accordance with the requirements of the EPA Consent Decree, the ROD, the SOW and any other applicable requirements.

BLM, during implementation of the BLM Assumed Work, shall work cooperatively with Atlas and VMMC to insure coordination of all design and field activities.

e Contribution to Operations and Maintenance:

1 Atlas and VMMC have primary responsibility for performing the Remedy O&M. However, BLM will contribute up to \$25,000 (subject to CPI adjustment as hereinafter

specified) per federal fiscal year (commencing with federal fiscal year 1993) (BLM Remedy O&M) toward the direct costs of operations and maintenance of the remedy contained in the EPA Consent Decree. Such BLM Remedy O&M costs shall be the first \$25,000 (as adjusted pursuant to subsection (6) herein) of costs incurred for (a) the removal and disposal of sediments; (b) the maintenance of access routes constructed solely for those purposes; and (c) removal and disposal of obvious obstructions in diversion ditches and drains. If such BLM Remedy O&M costs in any federal fiscal year do not exceed \$25,000 (as adjusted per CPI), the unspent portion thereof shall not be carried over into any succeeding fiscal year obligation.

2 The responsibility of BLM under this subparagraph (e) shall be considered part of the BLM Assumed Work as defined above, and such responsibility shall be in addition to BLM's responsibility for the revegetation project, patrolling and monitoring, road maintenance, and fence repair and maintenance set forth in Section VII.A.4.a.- c.

3 Only direct BLM costs attributable to the Site will be included in such BLM Remedy O&M

contract all such excess amounts. In no event shall BLM be responsible for performing or for engaging contractors to perform any portion of the Remedy O&M required for the Site other than the BLM Remedy O&M explicitly set forth in section VII(e)(1) of this agreement. If BLM is not permitted by law to engage contractors as contemplated in this paragraph, BLM shall provide Special Notice (as that term is defined in Section XXIV herein) of such determination to Atlas and VMMC, after which Atlas and VMMC shall be responsible therefor. BLM shall (a) have the right to review and comment on any such contracts proposed or contracts selected by Atlas and VMMC for the performance of the Remedy O&M work, and (b) promptly reimburse Atlas and VMMC for the cost of such work up to \$25,000 (as adjusted per CPI). It is provided, however, that indirect and overhead costs of Atlas and VMMC incurred pursuant to such contract(s) shall not be included in the contribution toward the Remedy O&M costs required of BLM herein, and all such costs shall be borne solely by Atlas and VMMC.

6 The monetary limitation of BLM's liability under this paragraph shall be adjusted every four (4) years in the same proportion as

costs. Indirect and overhead costs of BLM attributable to the Site shall not be included in BLM's contribution toward the Remedy O&M costs required of BLM herein, and all such costs shall be borne solely by BLM.

4 VMMC and Atlas will pay all Remedy O&M costs in excess of those costs that BLM is expressly required to pay in any federal fiscal year as BLM Remedy O&M.

5 BLM shall either perform the BLM Remedy O&M at the Site or, to the extent allowed by law, engage contractors to perform the BLM Remedy O&M work at the Site. If BLM engages contractors, all provisions of the EPA Consent Decree relating to the selection of contractors shall apply; in such case EPA and VMMC and Atlas shall have the right to review and comment upon such proposed contracts or contractors selected by BLM for the performance of the Remedy O&M work. It is further provided, however, that any portion of such contract that is protected from disclosure or release will be furnished only in redacted form. If any such contract calls for BLM to pay in excess of the amount payable by BLM as BLM Remedy O&M costs during any federal fiscal year, VMMC and Atlas shall transfer to BLM prior to the award of the

adjustments in the Consumer Price Index (CPI) (San Francisco-Oakland-San Jose, CA CMSA) from the level in existence as of June 1992.

(7) BLM shall remove or contract for the removal of sediment from sediment retention structures as often as conditions require but not less frequently than once annually; provided, however, that VMMC and Atlas may waive the requirement for annual removal of sediment upon being provided with reasonable evidence by BLM that the quantity of sediment to be removed is not sufficient to make removal necessary and cost-effective at that time.

f Demolition/Disposal of Mill Building - VMMC and Atlas will demolish the mill building and all other structures and debris (Mill Debris) on the Site, and will make reasonable efforts to obtain all necessary consents and approvals for burial of the Mill Debris on the lands at the Site that have been patented to private parties. If Atlas and VMMC demonstrate to BLM that such consents and approvals are not reasonably obtainable from the private parties owning patented land within the Site, BLM will permit VMMC and Atlas to bury the Mill Debris on public lands on the Site. However, prior to disposal of any Mill Debris on public lands within BLM's jurisdiction, Atlas and VMMC shall:

(i) submit to BLM for approval a work plan detailing (a) how the removal and disposal is to be performed, (b) the reclamation measures to prevent airborne and waterborne emissions (contouring, surfacing, etc.) that will be implemented by Atlas and VMMC after the Mill Debris has been removed, and (c) assurances that the removal and subsequent reclamation effort will comply with all applicable laws and regulations; and (ii) agree to indemnify and hold harmless BLM for any liability (except any liability that arises out of BLM's negligence, or the negligence of its agents, contractors or employees) that may result from the removal and disposal of the Mill Debris on public lands.

g Remedy Design/Construction - BLM will be responsible for design and construction of the BLM Assumed Work. VMMC and Atlas will be responsible for design and construction of all other aspects of the remedy (e.g., the water diversions, sediment-trapping dams, culverts, etc.) to be performed in the manner and on the schedule contained in the EPA Consent Decree.

h EPA's Future Oversight Costs - BLM will pay eighteen percent (18%) of EPA's Future Oversight Costs; Atlas and VMMC will pay the remainder. Atlas and VMMC will furnish BLM with a copy of all EPA invoices for such costs as soon as is reasonably possible following

receipt of such invoices. Then, within sixty (60) days of receipt by BLM of each EPA demand for payment, BLM shall remit a check for its percentage of the cost according to the procedure contained in Section XIX (Reimbursement of Future Response and Oversight Costs) of the EPA Consent Decree. Section XIX (Reimbursement of Future Response and Oversight Costs) of the EPA Consent Decree is hereby expressly incorporated by reference into this Settlement Agreement. If payment is not made by BLM within sixty (60) days of BLM's receipt of the EPA demand for payment, and VMMC and/or Atlas therefore pay BLM's percentage of such costs to EPA under the EPA Consent Decree, BLM shall reimburse VMMC and/or Atlas for such costs, upon proper demonstration of payment thereof by Atlas and VMMC, plus interest from the date of such payment.

i EPA's Future Response Costs - BLM will pay EPA's Future Response Costs relating to the revegetation project, patrolling and monitoring, road maintenance, and fence repair and maintenance set forth in Section VII.A.4.a.-c.; Atlas and VMMC will pay the remainder of EPA's Future Response Costs. BLM may object to such costs in the same manner as VMMC and Atlas under Section XIX.B. of the EPA Consent Decree, unless EPA objects to BLM doing so, in which case VMMC and Atlas shall act as BLM's proxy in such objection,

all costs of which will be reimbursed by BLM to VMMC and Atlas. BLM is hereby subject to all the provisions of Section XIX.B of the EPA Consent Decree in the same manner as VMMC and Atlas.

5 On August 11, 1992, VMMC and Atlas submitted a Draft Remedial Design Work Plan ("Draft RD Work Plan") to EPA. The Draft RD Work Plan was required to be developed in conformance with the ROD, the SOW, EPA Superfund Remedial Design and Remedial Action Guidance and any additional guidance documents provided by EPA. BLM was responsible only for development of that portion of the Draft RD Work Plan addressing the BLM Assumed Work.

6 Atlas and VMMC recognize that BLM, as administrator of public lands contained within the Site, has unique sovereign responsibilities over use of public lands. Therefore, to the extent that EPA requires modifications to the Draft RD Work Plan, Atlas and VMMC shall work with BLM in developing those portions of those modifications which <sup>Atlas + VMMC are to shell</sup> shall be implemented on BLM administered land and those portions of the required modifications involving tasks for which BLM will have O&M responsibilities. Atlas and VMMC shall submit any such modifications to the Draft RD Work Plan to BLM for review and shall agree to incorporate reasonable suggested revisions proposed by BLM and approved by EPA. *photo*

In the event BLM (as the administrator of public lands on which a part of the remedy is to be constructed) disagrees with Atlas and VMMC's intended implementation of any portion of

*as modified by  
EPA*



the remedy, Atlas, VMMC and BLM shall so inform EPA; in such event, [BLM reserves the right to resolve the dispute through appropriate executive branch administrative channels.] BLM shall incur no liability or responsibility to Atlas, VMMC or any other individual or entity as a result of BLM's activities related to its governmental oversight obligations for public lands to be impacted by the proposed action.

Except as may be payable in RR sec. 21 stipulated penalty

7 As provided in the EPA Consent Decree, EPA will approve, disapprove with comment, or approve with modifications the Draft RD Work Plan and other submissions. Consistent with the preceding provisions, VMMC, Atlas and BLM will revise disapproved documents for their respective portions of the Work Plans and other submissions and submit such modified documents to EPA as promptly as possible, but not later than the applicable date provided in the EPA Consent Decree.

8 The approved Work Plan will be deemed incorporated into and made an enforceable part of this Settlement Agreement and the Parties will implement their respective Work detailed in the resulting approved Work Plan. All Work shall be conducted in accordance with the NCP, the EPA Superfund Remedial Design and Remedial Action Guidance, and the requirements of the EPA Consent Decree and this Settlement Agreement, including the standards, specifications and schedules contained in the Work Plan.

9 BLM acknowledges and agrees that, as under the provisions of the EPA Consent Decree, neither the SOW, nor the Work Plan nor any approvals, permits or other permissions which

may be granted by EPA related to the EPA Consent Decree and/or this Settlement Agreement constitute a warranty or representation of any kind by EPA that the SOW or Work Plan will achieve the Standards set forth in the ROD and in any applicable provision hereof, and shall not foreclose EPA from seeking performance of all terms and conditions of the EPA Consent Decree. Nothing in this Settlement Agreement shall be construed to relieve BLM of its responsibilities to achieve all standards set forth in the ROD, the SOW, and in any applicable provision hereof; provided, however, that BLM's responsibilities in this regard relate only to the BLM Assumed Work.

10 VMMC, Atlas and, to the extent permitted by federal statute and regulation, BLM, shall meet all standards identified in the EPA Consent Decree, ROD and in the SOW with respect to the Work for which each Party has assumed responsibility at the Site.

11 The Parties shall dispose of any materials taken off-Site in compliance with EPA's Revised Procedures for Implementing Off-Site Response Actions (Offsite Policy) (EPA OSWER Directive 9834.11, November 13, 1987) and any amendments thereto. BLM may, and agrees that VMMC and Atlas may, with EPA's approval, dispose on-Site any sediment from catchment ponds and any other non-Mill Debris waste (provided such waste is developed on the Site) during performance of the remedial work or the O&M work, in accordance with procedures to be contained in a workplan approved by BLM (and by EPA, if EPA so requires). In the event that as a result of such disposal BLM suffers any liability, VMMC and Atlas

shall indemnify BLM for any such liability (except any liability that arises out of BLM's negligence, or the negligence of its agents, contractors or employees).

12 BLM shall submit all BLM Assumed Work reports to the designated Project Coordinators of VMMC and Atlas, and to EPA (provided EPA will accept such reports directly from BLM), according to the schedules set forth herein and in the EPA Consent Decree. At least five (5) working days prior to submission to EPA of any Deliverable required under BLM's Assumed Work a draft copy will be made available to Atlas and VMMC. BLM shall agree to accommodate reasonable suggested revisions as requested by Atlas and VMMC.

In the event that EPA requires that any Deliverable due to EPA under the EPA Consent Decree be provided only by Atlas and VMMC, a final version of such Deliverable must be provided to the Atlas and VMMC Project Coordinator at least 48 hours prior to the required submission to EPA. When EPA permits direct submission from BLM, then such Deliverables will be delivered to EPA (with copies to Atlas and VMMC) according to schedules set forth in the EPA Consent Decree.

B Responsibilities Regarding Documents to be submitted to EPA ("Deliverables"):

1 Monthly Progress Reports:

BLM shall prepare written progress reports ("Progress Reports") and provide such Progress Reports to VMMC and Atlas, and to EPA (provided EPA will accept such reports directly from BLM) on a monthly basis in accordance with the provisions of the

EPA Consent Decree and this Settlement Agreement addressing the responsibilities that BLM has assumed pursuant hereto. The Progress Reports shall describe actions taken to comply with provisions of the BLM Assumed Work under the EPA Consent Decree and with this Settlement Agreement, including a general description of activities commenced or completed during the reporting period, Work activities projected to be commenced or completed during the next reporting period, and any problems that have been encountered or are anticipated by BLM in commencing or completing its Assumed Work activities. The Progress Reports shall also include tables and explanations as specified in Sections D(1)(b)(iii) and D(1)(b)(iv) of the SOW. The Progress Reports shall be submitted to EPA by the 15th of each month for Work done the preceding month and planned for the current month. If such reports are submitted to EPA through VMMC and Atlas, they shall be provided to the Project Coordinator for VMMC and Atlas by the 13th day of each month. VMMC and Atlas shall provide BLM (simultaneously with submission of same to EPA) with copies of their Progress Reports submitted to EPA in accordance with the provisions of the EPA Consent Decree.

2     Preliminary Design. BLM shall submit to VMMC and Atlas (or EPA, as provided above) preliminary designs (30% final design) for its respective portion of the Work, as more fully set forth in Section VII.B.(4) of the EPA Consent Decree. VMMC and Atlas shall provide BLM (simultaneous with submission of same to EPA) with copies of their preliminary designs (30% final design)

for their respective portion of the Work, as more fully set forth in Section VII.B.(4) of the EPA Consent Decree.

3 Prefinal/Final Design. BLM shall prepare and submit to EPA prefinal and final work plans for its respective portions of the Work in two parts as described in the SOW and as more fully set forth in Section VII.B.(5) of the EPA Consent Decree and shall submit such work plans to VMMC and Atlas (or EPA, as provided above). VMMC and Atlas shall provide BLM (simultaneous with submission of same to EPA) with copies of their prefinal and final work plans for their respective portions of the Work in two parts as described in the SOW and as more fully set forth in Section VII.B.(5) of the EPA Consent Decree.

4 Drafts and Finals. VMMC, Atlas and BLM shall, pursuant to the schedule in the SOW and according to the responsibilities each Party assumes pursuant to this Settlement Agreement, submit a draft and a final of each of the above Deliverables (except the monthly report) for their respective portions of the Work.

5 EPA Action on Drafts and Deliverables. As provided in the EPA Consent Decree, EPA will approve, disapprove with comment, or approve with modifications any plan, report, draft Deliverable or other item which is required to be submitted for approval by EPA pursuant to the EPA Consent Decree. Consistent with the immediately preceding provision, the Parties shall, within the time allotted in the schedule, and for their respective areas of Work as assumed herein, either: (a) proceed

to take any action required by the approved or modified submission; or (b) correct the deficiencies as determined by EPA and resubmit the plan, report, draft or other item for approval. In the event EPA determines that there are deficiencies in the submissions, the Party shall proceed, at the direction of EPA, to take any action in its respective area of Work as assumed herein required by any non-deficient portion of the submission that is not dependent upon performance of the deficient portions of the submission.

Any stipulated penalties incurred by VMMC and Atlas by reason of BLM's failure under this paragraph and the preceding paragraph shall be reimbursed by BLM as Default Compensation pursuant to Section XXI (Stipulated Penalties/Default Compensation) hereof, plus interest.

#### VIII ADDITIONAL WORK

In the event that EPA determines, prior to the Certification of Completion provided for in Section XXXIX of the EPA Consent Decree, that additional work is necessary to (1) meet the Performance Standards relating to the remedy, or (2) carry out the remedy selected in the ROD, and that such additional work is necessary to prevent or terminate a release or threat of release that may present an imminent and substantial endangerment to human health, BLM shall be responsible for such additional work to the extent that it involves the BLM Assumed Work. VMMC and Atlas will be responsible for all other additional work. All

additional work will be developed and performed by the parties in accordance with Section VIII (Additional Work) of the EPA Consent Decree.

#### IX WORKER HEALTH AND SAFETY PLAN

VMMC and Atlas are required to submit a Worker Health and Safety Plan (the "Safety Plan") to EPA pursuant to Section VII (Work to be Performed) of the EPA Consent Decree. BLM will prepare and submit to EPA (with copies to Atlas and VMMC) that portion of the Safety Plan required for the BLM Assumed Work. Said Safety Plan shall be prepared in conformance with applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to those requirements found at 54 Fed. Reg. 9294 et seq. BLM shall comply with such Safety Plan in all respects in the performance of its Work and responsibilities at the Site.

#### X PERIODIC REVIEW BY EPA TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

A Pursuant to Section X of the EPA Consent Decree, EPA will review the Remedial Action at the Site at least every five (5) years after the entry of the EPA Consent Decree to assure that human health and the environment are being protected. EPA, or its contractors who are to conduct such review, will provide written notice to VMMC and Atlas of the date and time of any inspection of the remedial Work at the Site not less than ten (10) days prior to such inspection, and VMMC and Atlas will be

permitted the opportunity to have representatives present during such inspection. VMMC and Atlas will provide BLM with Notice (as defined in this Settlement Agreement) of such notification and BLM will be permitted the opportunity to have representatives present during such inspection. For a period, not to exceed thirty (30) years, regardless of whether EPA has provided the Parties with such notice, BLM shall reimburse EPA for eighteen percent (18%) of EPA's costs of performing these reviews, plus interest to the extent provided in Section X of the EPA Consent Decree.

B If upon such review, EPA determines that further response action is necessary to protect human health or the environment in accordance with the EPA Consent Decree, and if the further response action that EPA determines to be necessary is in connection with BLM Assumed Work (not including BLM Remedy O&M), then BLM shall take such action.

#### XI CONSTRUCTION QUALITY CONTROL

A BLM shall prepare a Construction Quality Control (CQC) Plan for the BLM Assumed Work and submit it to EPA (with copies to Atlas and VMMC) in accordance with Section XI (Construction Quality Control) of the EPA Consent Decree, which Section is hereby expressly incorporated into this Settlement Agreement. Upon approval and notice by EPA, BLM shall implement the CQC Plan for the BLM Assumed Work.



B BLM shall use quality control procedures in accordance with the CQC Plan and shall utilize standard EPA chain of custody procedures, as documented in the National Enforcement Investigations Center Policies and Procedures Manual as revised in May 1986 and any amendments thereto, and the National Enforcement Investigations Center Manual for the Evidence Audit, published in September 1981 and any amendments thereto, for all sample collection and analysis activities, unless other procedures are approved by EPA. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Settlement Agreement, BLM shall, at a minimum, ensure that quality control measures specified in the EPA Consent Decree (Section XI.B.) are employed at laboratories utilized for analysis.

C Sampling data generated by any Party consistent with the CQC Plan shall be admissible as evidence, without objection except as to relevance, in any proceeding under the EPA Consent Decree and/or this Settlement Agreement.

## XII PROJECT COORDINATORS

A BLM has designated a Project Coordinator to monitor the progress of the BLM Assumed Work, to coordinate communication between EPA, VMMC, Atlas and BLM, and to oversee coordination of the EPA Consent Decree and this Settlement Agreement. BLM has given notice to VMMC and Atlas of the name, address, telephone and facsimile numbers of BLM's Project Coordinator; EPA and VMMC

and Atlas have similarly designated their respective Project Coordinator's pursuant to the EPA Consent Decree and provided BLM with the name, address, telephone and facsimile numbers of such Project Coordinators. The Parties have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other Parties and EPA in writing at least five (5) days (if feasible) prior to the change. To the maximum extent possible, (a) communications between the Parties and with EPA (including all Notices), and (b) all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the applicable terms and conditions of the EPA Consent Decree and this Settlement Agreement, shall be directed through the Project Coordinators.

B The Parties' respective Project Coordinators may assign other representatives, including contractors, to serve as a site representative for oversight of performance of daily operations during remedial activities, and shall provide the other Parties and EPA with notice in writing of such assignments no later than the first day on which a site representative begins acting in that capacity.

### XIII SITE ACCESS

A To the extent that the Site is owned, managed or controlled by BLM, access to the Site to perform work required of a Party pursuant to the EPA Consent Decree or this Settlement

Agreement shall be governed by the Access Agreement between the Parties, attached hereto as Appendix D.

#### XIV BLM FUNDING

A It is the expectation of the Parties hereto that all responsibilities of BLM arising from its Assumed Work under this Settlement Agreement will be fully funded. To that end, BLM hereby assures VMMC and Atlas that it will request such funding through appropriate Department of the Interior internal budgetary procedures.

B Any requirement established by the terms of this Settlement Agreement that BLM pay or obligate funds, including (but not limited to) funds for Default Compensation (as hereinabove defined), is 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.

C If any funds required for the performance of any of BLM's responsibilities under this Settlement Agreement fail to be made available in any given federal fiscal year, BLM agrees to continue to resubmit requests for appropriations for such funding for each subsequent fiscal year until funding is obtained. If VMMC and Atlas expend their own funds to cover the costs of any BLM Assumed Work, and such funds are appropriated to BLM in a subsequent federal fiscal year, BLM shall reimburse VMMC and Atlas for their costs expended in performing BLM's

responsibilities, plus interest from the date of such expenditures.

D Notwithstanding anything to the contrary contained in this Settlement Agreement, if appropriated funds are not available to fulfill BLM's responsibilities hereunder, Atlas and VMMC reserve the right to seek reinstatement of their district court case against BLM or bring a new action against BLM for purposes of recovering such funds.

XV COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

A All actions required to be taken pursuant to this Settlement Agreement by any Party shall be undertaken in accordance with the requirements of all applicable Federal, (and as regards BLM, to the extent permitted by federal statute and regulation) State and local laws, regulations, and permitting requirements, and in accordance with the EPA Consent Decree and the ROD. In the event that BLM determines that it is unable to take an action requested of it under this Settlement Agreement in full and complete accordance with all applicable federal, State and local laws and regulations, or in accordance with the EPA Consent Decree and the ROD, BLM will provide Special Notice of same to Atlas and VMMC.

B With respect to their respective Work, each Party shall obtain all permits or approvals necessary under federal, state or local laws and shall submit timely applications and requests for any such permits and approvals.

XVI DATA EXCHANGE: SAMPLING AND ANALYSIS

A BLM shall permit EPA to observe BLM Assumed Work at the Site, and at the request of EPA, BLM shall allow split or replicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by BLM or anyone acting on its behalf pursuant to the implementation of applicable provisions of the EPA Consent Decree and/or this Settlement Agreement. At least seven (7) days in advance of any sampling for asbestos content, the sampling Party shall notify EPA and the other Parties of the intended date of commencement of any sampling activity. In addition, the sampling Party shall notify EPA and the other Parties at least forty-eight (48) hours prior to any modification or proposed changes to any such sample collection activity. In addition, any Party shall notify EPA and the other Parties thirty (30) days prior to disposal of any such samples, and shall provide EPA with an opportunity to take possession of all or a portion of such samples.

B Within thirty (30) days of the Effective Date hereof, Atlas and VMMC shall provide BLM with the system they have proposed to EPA for managing and organizing data collected pursuant to the EPA Consent Decree, and if such system is applicable to BLM's Assumed Work under this Settlement Agreement, BLM shall adopt this data management system for submissions to EPA. If such system is not applicable to BLM's Assumed Work or BLM cannot adopt such system, BLM shall, within forty-five (45)

days of the Effective Date of this Settlement Agreement, propose to EPA (with copies to Atlas and VMMC) an alternative plan and system to manage and organize data related to the BLM Assumed Work. Upon approval of such plans by EPA, BLM shall implement the data management plans and systems according to its responsibilities pursuant to this Settlement Agreement.

#### XVII RETENTION OF RECORDS

A Each Party shall instruct all of its contractors, subcontractors, and anyone else acting on its behalf at the Site, to preserve and retain (in the form of originals or exact copies, or in the alternative, microfiche of all originals) all records, documents and information of whatever kind, nature, or description relating in any manner to the Site, regardless of any document retention policy to the contrary, for a period of ten (10) years after completion of the applicable portion of the Work or termination of this Settlement Agreement, whichever is later. During the ten-year period following the completion of the Work, or earlier if requested by EPA, originals or copies of all such records, documents, and information shall be delivered to the EPA Project Coordinator or designee. Section XVII (Retention of Records) of the EPA Consent Decree is hereby expressly incorporated by reference into this Settlement Agreement. After this ten-year period, BLM shall notify EPA no later than 60 days prior to the destruction of such documents. Upon timely request

by EPA, BLM shall make such documents available to EPA prior to their destruction.

B Nothing contained herein shall be construed to require the disclosure by any Party of any information which is confidential under the attorney-client privilege, the attorney work-product privilege, the deliberative process privilege, or any other applicable privilege recognized by law.

#### XVIII RESERVATION OF RIGHTS

A Notwithstanding any other applicable provision in the EPA Consent Decree, and this Settlement Agreement, the Covenant Not to Sue, as provided in Section XXVIII (Covenant Not to Sue) of the EPA Consent Decree and Section XXVIII (Covenant Not to Sue) of this Settlement Agreement, shall not relieve any Party of its responsibility to meet and maintain compliance with applicable requirements set forth in the EPA Consent Decree and this Settlement Agreement that such Party has assumed herein. Except as provided in Section XXVIII (Covenant Not to Sue) of this Settlement Agreement and subject to the dispute resolution provisions contained elsewhere herein, the Parties reserve all rights to proceed against each other for reimbursement of funds paid pursuant to the EPA Consent Decree due to a failure of either Party to perform any of its work under this Settlement Agreement and/or to proceed against another Party for monetary penalties and damages, costs, interest and attorney's fees for any future violation of law or this Settlement Agreement.

B All Parties hereto expressly reserve all rights and defenses that they may have, except as otherwise provided in this Settlement Agreement.

XIX RESERVED

XX RESERVED

XXI STIPULATED PENALTIES/DEFAULT COMPENSATION

A VMMC and Atlas are potentially liable for the payment of stipulated penalties to EPA in accordance with Section XXI (Stipulated Penalties) of the EPA Consent Decree. Said Section XXI of the EPA Consent Decree and each and every provision of the EPA Consent Decree which authorizes EPA to assess stipulated penalties against VMMC and Atlas is expressly incorporated into this Settlement Agreement. In the event that any such stipulated penalties assessed against VMMC and Atlas are levied as a result of BLM's actions or inactions relating to the BLM Assumed Work, such stipulated penalties shall be reimbursed to VMMC and Atlas as Default Compensation by BLM with interest from the date of payment to EPA by VMMC and Atlas. In no event shall the Default Compensation paid by BLM to VMMC and Atlas for non-compliance with the requirements of this Settlement Agreement, be less than the stipulated penalties actually paid by VMMC and Atlas to EPA as a direct result of BLM's non-compliance with the requirements of this Settlement Agreement.



VMMC and Atlas will provide Special Notice to BLM of demands made by EPA upon VMMC and Atlas for stipulated penalties assessed due to BLM's alleged non-compliance with the terms of this Settlement Agreement. If BLM believes that EPA's assessment of such stipulated penalties does not arise out of BLM's non-compliance with this Settlement Agreement, BLM may invoke the dispute resolution provisions of this Settlement Agreement to challenge any assertion by Atlas and VMMC that the assessment of such stipulated penalties by EPA under the procedures provided for in the EPA Consent Decree was caused by the action or inaction of BLM. However, except as provided below, BLM may not challenge the amount of such penalties assessed by EPA.

B. If the United States, through EPA, performs all or portions of the BLM Assumed Work under the EPA Consent Decree because of BLM's failure to comply with the responsibilities assumed by it under this Settlement Agreement, and VMMC and Atlas are assessed the costs of such BLM Assumed Work performed by EPA, or VMMC and Atlas are required to perform such BLM Assumed Work, then BLM shall reimburse VMMC and Atlas for the costs of such BLM Assumed Work, in addition to any Default Compensation assessed pursuant to Paragraph A above, plus interest from the date of such payment or performance of such Work by Atlas and VMMC.

#### XXII FORCE MAJEURE

A. For purposes of this Settlement Agreement, force majeure is defined as any event which is acceptable to EPA as a

force majeure event under the EPA Consent Decree. Section XXII (Force Majeure) of the EPA Consent Decree is hereby expressly incorporated into this Settlement Agreement.

B. The Party asserting force majeure shall have the burden of asserting and proving that the event was in fact a force majeure event. When circumstances are occurring or have occurred that delay or may delay the completion of any phase of the Remedial Action for which the Party has responsibility under the terms of this Settlement Agreement, whether or not due to a force majeure event, that Party shall, no later than seventy-two (72) hours after the Party becomes aware or should have become aware of the event, notify the Project Coordinators for EPA and all other Project Coordinators orally and shall, within five (5) days of such oral notification notify said Project Coordinators in writing of: the anticipated length and cause of the delay; the reasons why the delay is beyond the control of the Party; which of the tasks that the Party is responsible for under the terms of this Settlement Agreement are directly affected by the delay; the measures taken and/or to be taken by the Party to prevent or minimize the delay; the timetable by which the Party intends to implement these measures; and any aspects of the event which may cause or contribute to an endangerment to public health, welfare or the environment.

C. EPA shall, under the terms of the EPA Consent Decree, determine whether the event constitutes force majeure. If EPA determines that the event did not constitute force majeure then

any delay caused by the event claimed to be force majeure by the Party may constitute noncompliance with the EPA Consent Decree by VMMC and Atlas, and any stipulated penalties thereby assessed shall be paid or reimbursed by the Party responsible (if BLM, as Default Compensation and not as stipulated penalties) for the delay, as appropriate, plus interest from the date of payment of said penalties. If EPA determines the event does constitute force majeure the Party shall propose an appropriate modification to the schedules for the Work to be performed by it under the terms of this Settlement Agreement. EPA will approve, disapprove or approve with modifications that proposed Schedule.

D Use of the force majeure provision shall not relieve the Party of its duty to complete all other tasks in a timely manner in accordance with the schedule set forth in the EPA Consent Decree and this Settlement Agreement. All Parties shall adopt all measures to avoid or minimize delay.

E Failure of a Party to comply with the requirements of this Section shall preclude it from asserting any claim of force majeure.

F If BLM believes that a force majeure event has delayed its accomplishment of any BLM Assumed Work, BLM reserves the right to resolve the dispute through appropriate executive branch administrative channels.

### XXIII DISPUTE RESOLUTION

A The procedure contained in this Section shall apply to all disputes arising under any provision of this Settlement Agreement. Section XXIII (Dispute Resolution) of the EPA Consent Decree is expressly incorporated herein by reference.

B The Parties hereto shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Settlement Agreement or any Work required hereunder. Any dispute which arises with respect to this Settlement Agreement shall in the first instance be the subject of informal negotiations between BLM and VMMC and Atlas. Prior to invoking judicial intervention, any unresolved disputes arising between VMMC and Atlas' site representative and BLM or its contractors shall be referred to the VMMC and Atlas and BLM Project Coordinators. If the Parties' Project Coordinators are unable to settle the dispute within five (5) days, the dispute shall be referred to officials of VMMC and Atlas and BLM's State Director for California.

C If BLM objects to any EPA decision that affects BLM, BLM reserves the right to resolve the dispute through appropriate executive branch administrative channels. In such event BLM shall provide Special Notice to VMMC and Atlas of its objections. Such discussions between BLM and EPA shall not alter BLM's responsibility under this Settlement Agreement to pay Default Compensation to Atlas and VMMC for any assessment by EPA of

stipulated penalties against VMMC and Atlas resulting from BLM actions or inactions.

D Disputes Between Atlas and VMMC and BLM.

1 Alternative Dispute Resolution:

In the event that a dispute between Atlas and VMMC and BLM cannot be resolved by the informal negotiation procedures outlined in Paragraph B above, then any Party may request that the matter be handled through non-binding alternative dispute resolution (ADR). However, no Party shall be obligated to participate in ADR.

2 Petition Filed In Court:

In the event that a dispute between Atlas and VMMC and BLM cannot be resolved by the informal negotiation procedures outlined in Paragraph B above, and in the event that all Parties have not consented to ADR and resolved the dispute thereby, then any Party may file a petition in an appropriate court asking the court to resolve the dispute and award such other relief as is warranted under the circumstances. The filing of such petition shall not of itself extend or postpone any Party's obligations under the EPA Consent Decree and this Settlement Agreement with respect to the disputed issue, or stay the provisions of Section XXI (Stipulated Penalties) of the EPA Consent Decree or Section XXI (Stipulated Penalties/Default Compensation) of this Settlement Agreement. The Court shall review the dispute de novo, not limited to the administrative record, and the Party

protesting the proposed work shall have the burden of proving by a preponderance of the evidence that its view should prevail.

#### XXIV NOTICE

A Unless otherwise specifically provided in this Settlement Agreement, when routine communication with another Party is required by the terms of this Settlement Agreement, it shall be sufficient "Notice" to provide such communication in writing, postage prepaid, and addressed to the respective Project Coordinators. However, where this Settlement Agreement requires that "Special Notice" be provided, such communication shall be as follows: telephone and facsimile notice within two (2) working days to the Parties' Project Coordinators, followed by written Notice as specified above. Failure by any party to timely provide notice shall not affect any party's rights under this Settlement Agreement except to the extent that the party deprived of timely notice is actually prejudiced by such deprivation.

#### XXV MODIFICATION

No modification shall be made to this Settlement Agreement without written Notice to and written approval of the Parties hereto. The Notice required by this Paragraph shall set forth the nature of and reasons for the requested modification. No oral modification of this Settlement Agreement shall be effective.

#### XXVI ADMISSIBILITY OF DATA

For the purpose of this action only, the Parties waive any evidentiary objection as to the authenticity of data gathered, generated, or evaluated by any Party or EPA in the performance or oversight of the Work under this Settlement Agreement that has been verified using the Construction Quality Control procedures specified in Section XI (Construction Quality Control) of the EPA Consent Decree. The Parties shall be able to impeach or otherwise contest the credibility, validity or meaning of such evidence.

#### XXVII RIGHTS AGAINST THIRD PARTIES

Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party hereto. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory hereto may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which a 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.

#### XXVIII COVENANT NOT TO SUE

A Subject to the provisions of Section XVIII (Reservation of Rights) and this Section, VMMC and Atlas covenant not to sue,

and not to execute judgment against BLM for any and all civil liability to VMMC and Atlas for causes of action arising under CERCLA, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Site, or for matters covered by this Settlement Agreement. This Covenant Not To Sue shall be effective so long as BLM continues to perform, completely and satisfactorily, its responsibilities under this Settlement Agreement. With respect to Future Liability, this Covenant Not To Sue is conditioned upon and shall take effect only when all of the following have occurred: (1) EPA issues a Certificate of Completion of the Remedial Action pursuant to Section XXXIX (Certificate of Completion) of the EPA Consent Decree, and (2) the receipt by EPA of the payments required by Sections XIX (Reimbursement of Future Response and Oversight Costs) of the EPA Consent Decree and this Settlement Agreement (or the receipt by VMMC and Atlas of reimbursement from BLM pursuant to Section XIX (Reimbursement of Future Response and Oversight Costs) of this Settlement Agreement), and (3) the complete and satisfactory performance by BLM of its responsibilities under this Settlement Agreement. This Covenant Not To Sue extends only to BLM and its officials and employees and their agents, and does not extend to any other person.

B Subject to the provisions of Section XVIII (Reservation of Rights) and this Section, BLM covenants not to sue, and not to execute judgment against VMMC and Atlas for any and all civil liability to BLM for causes of action arising under CERCLA, and



the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Site, or for matters covered by this Settlement Agreement. This Covenant Not To Sue is conditioned upon and shall be effective so long as Atlas and VMMC continue to perform, completely and satisfactorily, their responsibilities under this Settlement Agreement. With respect to Future Liability, this Covenant Not To Sue shall take effect only when all of the following have occurred: (1) EPA issues a Certificate of Completion of the Remedial Action pursuant to Section XXXIX (Certificate of Completion) of the EPA Consent Decree, (2) the receipt by EPA of the payments required by Sections XIX (Reimbursement of Future Response and Oversight Costs) of the EPA Consent Decree and this Settlement Agreement, and (3) the complete and satisfactory performance by Atlas and VMMC of their responsibilities under this Settlement Agreement. This Covenant Not To Sue extends only to Atlas and VMMC and any of their officers, agents, affiliates, successors and assigns and does not extend to any other person.

C Notwithstanding any other provision of this Settlement Agreement, each Party reserves the right to institute proceedings in a new action seeking to (1) compel another Party to perform any additional response work at or emanating from the Site, or (2) reimburse that Party for Response Costs that are owed to EPA under the provisions of the EPA Consent Decree or otherwise if:

1 Prior to U.S. EPA certification of completion of the remedial action,

a conditions at the Site, previously unknown to EPA, are discovered by EPA after the entry of the EPA Consent Decree, or

b information is received, in whole or in part, after the entry of the EPA Consent Decree, and these previously unknown conditions or information indicate that the selected remedy will not adequately protect human health or the environment, and EPA attempts to require BLM, VMMC and/or Atlas to perform additional work at the Site or to pay for costs incurred by EPA for additional work based upon such previously unknown conditions or information; or

2 Subsequent to U.S. EPA certification of completion of the Remedial Action,

a conditions at the Site, previously unknown to EPA are discovered by EPA after certification of completion by EPA, or

b information is received, in whole or in part, after certification of completion by EPA, and these previously unknown conditions or information indicate that the selected remedy as implemented is not protective of human health or the environment, and EPA attempts to require BLM, VMMC and/or Atlas to perform additional work at the Site or to pay for costs incurred by EPA for additional work based upon such previously unknown conditions or information.

D Notwithstanding any other provision in this Settlement Agreement, this Covenant Not To Sue shall not relieve a Party of

its responsibility to meet and maintain compliance with the requirements assumed by it set forth in this Settlement Agreement. Each Party reserves all of its rights to take response actions at the Site, including the right to take response action in the event of a breach of the terms of this Settlement Agreement by another Party and to seek recovery of costs which result from such a breach.

E The Covenants Not to Sue contained in Paragraphs A and B of this Section shall not apply to any matter not expressly addressed by this Settlement Agreement, including the following claims:

1 Claims based on a failure by a Party to meet the responsibilities of this Settlement Agreement;

2 Any other claims of a Party for any other costs or actions at the Site which are not expressly and exclusively undertaken pursuant to the terms of the EPA Consent Decree and this Settlement Agreement;

3 Claims based on a Party's liability arising from the past, present, or future disposal of Waste Material outside of the Site and attributable to the Site;

4 Claims based on liability arising out of the City of Coalinga Operable Unit, the Ponding Basin at the California Aqueduct as that area is defined in the ROD, and/or the Clear Creek Management Area;

5 Claims based on liability for damage to natural resources as defined in CERCLA;

6 Claims based on liability for future response or oversight expenses incurred by a Party; or

7 Liability for any violations of Federal or State law which occur during or after implementation of the Work.

F Nothing in this Settlement Agreement shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action against any person (as defined in Section 101(21) of CERCLA) or other entity not a signatory to this Settlement Agreement, for any liability it may have arising out of or relating to the Site.

#### XXIX RESERVED

#### XXX COMMUNITY RELATIONS

Pursuant to the EPA Consent Decree and as requested by EPA, BLM will cooperate with VMMC and Atlas and EPA in providing information to the public and shall participate in the preparation of appropriate information disseminated to the public, and if necessary, shall provide an appropriate representative to attend public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site directly related to the BLM Assumed Work. BLM will cooperate with VMMC and Atlas and participate in development of a Community Relations Plan as required by the EPA Consent Decree to the extent that necessary information relating to BLM Assumed Work cannot be derived by Atlas and VMMC from BLM submittals pursuant

to performance of its Assumed Work and any BLM reports. BLM shall also cooperate with EPA in this endeavor as may be required by EPA for the BLM Assumed Work in accordance with this Settlement Agreement.

#### XXXI DISMISSAL OF ACTION

A Upon the execution of this Settlement Agreement by all Parties, the Parties shall file with the Court a joint motion to dismiss the action styled Vinnell Mining and Minerals Corporation and Atlas Corporation v. Bureau of Land Management, Civil Action no. 91-1324 (JHG).

#### XXXII CONSISTENCY WITH THE NCP

BLM and VMMC and Atlas agree that the Operable Unit Remedial Action and Work, if performed in full accordance with the EPA Consent Decree and this Settlement Agreement, is consistent with the provisions of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, pursuant to Section 105 of CERCLA, 42 U.S.C. 9605. Section XXXII (Consistency with the NCP) of the EPA Consent Decree is expressly incorporated into this Settlement Agreement. The Work performed in the implementation of this remedial action shall meet the substantive standards of all "applicable requirements" and "relevant and appropriate requirements" as those terms are defined in 40 C.F.R. 300.6, as generally described in CERCLA Compliance with Other Environmental Statutes, October 2, 1985 (50

Fed. Reg. 47946, November 20, 1985), and as is required by Section 121 of CERCLA, 42 U.S.C. 9621.

XXXIII LIABILITY ARISING FROM A PARTY'S ACTION

BLM shall assume any and all liability that VMMC and Atlas may have under the EPA Consent Decree for the BLM Assumed Work. Each Party is responsible for any liability to any person, including, without limitation, liability for personal injury or property damage, whether a Party to this Settlement Agreement or the EPA Consent Decree or any third party, arising from or relating to that Party's acts or omissions or the acts or omissions of any of its contractors, subcontractors, or any other person acting on that Party's behalf in the performance of the Work required of that Party or the failure of that Party to perform fully or complete the Work required of that Party under the provisions of this Settlement Agreement.

XXXIV OTHER CLAIMS

In consideration of the entry of this Settlement Agreement, BLM agrees not to make any claims pursuant to Section 112 or Section 106(b)(2) of CERCLA, 42 U.S.C. §§ 9612, 9606(b)(2), or any other provision of law directly or indirectly against the Hazardous Substance Superfund.

XXXV RESERVED

XXXVI REPRESENTATIVE AUTHORITY

Each undersigned representative of the respective Parties hereto certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Settlement Agreement and to legally bind such Party hereto.

XXXVII EFFECTIVE DATE

This Settlement Agreement is effective upon its full execution and delivery by the Parties.

XXXVIII SEVERABILITY

If any provision or authority of this Settlement Agreement or the application of this Settlement Agreement to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of the Settlement Agreement shall remain in force and shall not be affected thereby.

XXXIX CERTIFICATION OF COMPLETION

A Pursuant to the EPA Consent Decree, within ninety (90) days after VMMC and Atlas conclude that the Remedial Action has been fully performed, VMMC and Atlas will so notify EPA and will schedule and conduct a pre-certification inspection to be attended by VMMC and Atlas and EPA. VMMC and Atlas will provide BLM with Special Notice of such notification and inspection and BLM shall be permitted to attend such inspection and participate

as necessary in connection with the BLM Assumed Work. Such inspection shall be followed by a written report submitted within thirty (30) days of the inspection. The report shall be prepared by a registered professional engineer and shall certify that the Remedial Action has been completed in full satisfaction of the requirements of the EPA Consent Decree. BLM shall certify therein that BLM's portion of the Remedial Action has been completed in full satisfaction of the applicable requirements of the EPA Consent Decree. As provided in the EPA Consent Decree, if EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with the EPA Consent Decree, EPA will notify VMMC and Atlas in writing of the activities that must be performed to complete the Remedial Action and may set forth in the notice a schedule for performance of such activities. If these activities relate to any obligations, responsibilities or tasks that BLM has assumed under the terms of this Settlement Agreement, then VMMC and Atlas will provide Special Notice of same to BLM, and BLM will be subject to EPA's schedule for the performance of such Work. BLM shall perform all activities described in the notice in accordance with the specifications and schedules established therein, and in accordance with the rights, obligations, responsibilities and tasks that BLM has assumed under the terms of this Settlement Agreement.

B Pursuant to the terms of the EPA Consent Decree, if EPA concludes, following the initial or any subsequent notification



of completion by VMMC and Atlas and BLM that the Remedial Action has been fully performed in accordance with the EPA Consent Decree, EPA shall so certify in writing to VMMC and Atlas, who shall promptly provide Notice of same to BLM. This certification shall constitute the "certification of completion of remedial action" pursuant to Section 122(f)(3) of CERCLA and for purposes of the EPA Consent Decree and this Settlement Agreement.

C The issuance of such certification of completion shall not alter other terms or the Party's responsibilities as set forth in the provisions of Section XVII (Retention of Records), Section XVIII (Reservation of Rights), Section XXVIII (Covenant Not to Sue), Section X (Periodic Review to Assure Protection of Human Health and the Environment), Section XIX (Reimbursement of Response and Oversight Costs) and such other continuing rights and responsibilities of BLM under this Settlement Agreement.

#### XL TERMINATION AND SATISFACTION

This Settlement Agreement shall terminate upon certification by EPA, pursuant to the EPA Consent Decree, of completion of the Work To Be Performed, and that VMMC and Atlas have satisfied their responsibilities under Section XIX (Reimbursement of Response and Oversight Costs), Section XX (Reimbursement of Past Costs), Section XXI (Stipulated Penalties), and Section VIII (Additional Work) of the EPA Consent Decree, and the satisfaction by all Parties of their obligations hereunder. This Settlement Agreement will not terminate, under any circumstances, before the

EPA Consent Decree. Termination of the Parties' obligations under this Settlement Agreement shall not alter the following provisions of this Settlement Agreement: Section XVII (Retention of Records), Section XVIII (Reservation of Rights), Section XXVII (Contribution Protection), Section XXVIII (Covenant Not to Sue), Section X (Periodic Review to Assure Protection of Human Health and the Environment), Section XIX (Reimbursement of Response and Oversight Costs) and such other continuing rights and responsibilities of the Parties under this Settlement Agreement.

#### XLI SECTION HEADINGS

The section headings set forth in this Settlement Agreement and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions hereof.

#### XLII COUNTERPARTS

This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

SIGNATURE PAGE FOR SETTLEMENT AGREEMENT BETWEEN ATLAS CORPORATION  
AND VINNELL MINING AND MINERAL CORPORATION, AS PLAINTIFFS, AND  
THE UNITED STATES, AS DEFENDANT:

FOR PLAINTIFF ATLAS CORPORATION

DATE: \_\_\_\_\_

SIGNATURE PAGE FOR SETTLEMENT AGREEMENT BETWEEN ATLAS CORPORATION  
AND VINNELL MINING AND MINERAL CORPORATION, AS PLAINTIFFS, AND  
THE UNITED STATES, AS DEFENDANT:

FOR PLAINTIFF VINNELL MINING & MINERALS CORPORATION:

\_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE PAGE FOR SETTLEMENT AGREEMENT BETWEEN ATLAS CORPORATION  
AND VINNELL MINING AND MINERAL CORPORATION, AS PLAINTIFFS, AND  
THE UNITED STATES, AS DEFENDANT:

FOR DEFENDANT, UNITED STATES:

\_\_\_\_\_  
MYLES FLINT  
Acting Assistant Attorney General  
Environment and Natural Resources  
U.S. Department of Justice

DATE: \_\_\_\_\_

\_\_\_\_\_  
MARTIN F. McDERMOTT  
SAMUEL W. PLAUCHE'  
Attorneys, Environmental Defense Section  
U.S. Department of Justice

DATE: \_\_\_\_\_

LIST OF APPENDICES

- Appendix A      EPA Consent Decree lodged on June 11, 1992 in the U.S. District Court for the Eastern District of California, Docket No. CIV-S-92 839 (EJG PAN)
- Appendix B      The Record of Decision (ROD) for the Mine Area Operable Unit Remedial Action dated February 14, 1991.
- Appendix C      Scope of Work (SOW)
- Appendix D      Access Agreement