

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF MONTANA

IN THE MATTER OF VIOLATIONS OF
THE MONTANA WATER QUALITY ACT
BY EXXONMOBIL PIPELINE COMPANY,
AT SILVERTIP PIPELINE, LAUREL,
YELLOWSTONE COUNTY, MONTANA.
(FID #2103)

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. WQA-12-08

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“AOC”) is entered into voluntarily between ExxonMobil Pipeline Company (“ExxonMobil”) and the Montana Department of Environmental Quality (“DEQ”) pursuant to the authority vested in the State of Montana, acting by and through the DEQ, under the Montana Water Quality Act (“WQA”) (Title 75, chapter 5, part 6, MCA), and regulations adopted thereunder. This AOC requires preparation and performance of further Work, including investigations and cleanup activities in relation to the Discharge at the Site, comprising all violations of the WQA related to and/or arising out of the ExxonMobil Silvertip Pipeline Crude Oil Discharge to the Yellowstone River, occurring near Laurel, Yellowstone County, Montana. The initial investigation and cleanup activities required by this AOC are found in Attachment A (Scope of Work) to this AOC. This AOC contemplates additional work, as described in Section XXVIII (the “Additional Work”) to achieve final cleanup at the Site.

2. DEQ and ExxonMobil agree that this AOC has been negotiated in good faith and that the actions undertaken by ExxonMobil in accordance with this AOC do not constitute an admission of any liability. ExxonMobil denies or does not admit, and retains the right to controvert in any subsequent proceedings the validity of DEQ’s Findings of Fact and Conclusions of Law and Determinations (Section V), provided however that in an action to enforce this AOC, DEQ is not required to demonstrate the validity of this AOC and DEQ’s Findings of Fact and Conclusions of Law and Determinations (Section V) and ExxonMobil may not defend against the enforcement action by attacking this AOC and DEQ’s Findings of Fact and Conclusions of Law and Determinations (Section V) or DEQ’s authority to enter into this AOC. ExxonMobil’s execution and compliance with this AOC shall not be construed as an admission of liability, fault or wrong-doing by ExxonMobil and shall not give rise to any presumption of law or findings of fact which shall inure to the benefit of any third party. ExxonMobil agrees to comply with, and be bound by, the terms of this AOC and further agrees it will not seek judicial review regarding the jurisdiction (or the facts that constitute jurisdiction) of this AOC or authority to enter into this AOC.

3. The Scope of Work (the “SOW”) is hereby incorporated into this AOC as Attachment A. In the event of a conflict between this AOC and Attachment A, this AOC shall govern.

II. PARTIES BOUND

4. This AOC applies to and is binding upon DEQ, ExxonMobil, and its successors and assigns. Any change in ownership or corporate status of ExxonMobil, including, but not limited to, any transfers of ExxonMobil’s assets or real or personal property shall not alter ExxonMobil’s status or responsibilities under this AOC.

5. ExxonMobil shall ensure that its primary Contractors receive a copy of this AOC and shall make a good faith effort to ensure that its Contractors, subcontractors and representatives engaged in the SOW comply with this AOC. ExxonMobil shall be responsible for any action by its Contractors, subcontractors and representatives acting on its behalf resulting in noncompliance with this AOC.

6. Each undersigned representative of ExxonMobil certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind ExxonMobil to this AOC.

III. STATEMENT OF PURPOSE

7. In entering into this AOC, the objectives of DEQ and ExxonMobil are: (a) to determine the nature and extent of the Discharge and/or alteration of land or state waters resulting from the Discharge and any threat to the public health, welfare, or the environment caused by the Discharge and/or alteration of land or state waters resulting from the Discharge, by conducting the Work specifically outlined in the SOW and Additional Work, if necessary (as outlined in Section XXVIII); (b) to identify and evaluate Work alternatives to prevent, mitigate or otherwise respond to or remedy the Discharge and/or alteration of land or state waters resulting from the Discharge; (c) to achieve final cleanup of the Site by requiring ExxonMobil to conduct Additional Work, if necessary (as outlined in Section XXVIII); (d) to recover Past Costs and Future Costs incurred by the State and DEQ with respect to this AOC; and (e) to assess civil penalties, a portion of which shall include one or more DEQ-approved Supplemental Environmental Project(s) (“SEP”), against ExxonMobil arising out of and/or resulting from the Discharge.

8. ExxonMobil reserves all rights provided by law to seek and obtain contribution, indemnification, and/or any other form of recovery from other potentially responsible parties or other third parties or their insurers for past or future investigation or remediation response and/or cleanup costs or such other costs or damages arising from the Discharge as may be provided by law. For the purposes of this Paragraph 8, the State is considered a first party. Nothing in this Paragraph 8 is intended to modify or alter Sections XXIII (Covenant Not to Sue by ExxonMobil/Release) and XXIV (Reservation of Rights by ExxonMobil).

9. Up to the Effective Date of this AOC, ExxonMobil has demonstrated good faith efforts to resolve the alleged violations cited in the Violation Letter (“VL”) referenced in Paragraph 24. DEQ acknowledges that in response to requests for information and requirements of the VL, ExxonMobil has addressed and continues to address the alleged violations to the best of DEQ’s knowledge, and has worked cooperatively with DEQ.

10. As of the Effective Date, ExxonMobil represents that it has spent tens of millions of dollars and performed thousands of hours of work to investigate and clean up the Discharge. Although certain Work remains to be done (as provided in Attachment A of this AOC), and DEQ may require Additional Work under Section XXVIII, ExxonMobil has expended significant resources on the investigation and cleanup of the Discharge. When entering into this AOC, DEQ considered ExxonMobil’s proactive approach to investigation and cleanup of the Discharge. DEQ’s agreement to the terms of this AOC is unique and specific to the Discharge and ExxonMobil’s response to it.

IV. DEFINITIONS

11. Terms used in this AOC are to be taken and understood in their natural and ordinary sense unless this AOC indicates that a different meaning was intended. Unless otherwise expressly provided herein, terms used in this AOC that are defined in the WQA, or any regulations promulgated thereunder, shall have the meaning assigned to them under the law. Whenever terms listed below are

used in this AOC, in the documents attached to this AOC, or incorporated by reference into this AOC, the following definitions shall apply:

- a. "AOC" means this document together with Attachment A (Scope of Work) and any subsequent incorporations, modifications and amendments.
- b. "Approved" or "Approval" when used in conjunction with this AOC, means reviewed by DEQ (and if appropriate, modified), and finally agreed to and approved by DEQ in writing.
- c. "Contractor" means the individual(s), company, or companies retained by or on behalf of ExxonMobil to undertake and complete all or a part of the Work.
- d. "Day" means a calendar day, unless a business day is specified. In computing any period of time under this AOC, where the last day would fall on a Saturday, Sunday, or Federal or State of Montana holiday, the period shall run until the close of business of the next business day.
- e. "Discharge" means the ExxonMobil Pipeline Company Silvertip Pipeline Crude Oil discharge into the Yellowstone River, which occurred near Laurel, Yellowstone County, Montana, on or about July 1, 2011.
- f. "Deliverable" means any written document, including but not limited to, Work Plans, SEP Plans, SEP Completion Reports, reports, notices, memoranda, data or other documents that ExxonMobil must submit to DEQ under the terms of this AOC.
- g. "DEQ" means the Montana Department of Environmental Quality and any successor departments or agencies of the State of Montana.
- h. "Effective Date" means the effective date of this AOC as provided in Section XXXIII (Effective Date).
- i. "ExxonMobil" means ExxonMobil Pipeline Company, a Delaware corporation authorized to do business in the State of Montana, and any successors in interest.
- j. "Force majeure" means any event arising from causes beyond the control of ExxonMobil, or of any entity controlled by or associated with ExxonMobil, including but not limited to its Contractors and subcontractors, that delays or prevents performance of any obligation under this AOC despite the reasonable best efforts of ExxonMobil to fulfill the obligation. The requirement that ExxonMobil use "reasonable best efforts" to fulfill the obligation includes using reasonable best efforts to anticipate any potential force majeure event and reasonable best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the force majeure event, such that the delay is minimized to the greatest extent reasonably possible. Force majeure events include delays or failures of governmental agencies in issuing necessary permits or approvals, provided that ExxonMobil has timely submitted complete applications and provided all requested information. Force majeure events include delays or failures to obtain access to any portion of the Site due to denial of access by a landowner and/or tenant, provided that ExxonMobil has exercised reasonable best efforts to obtain access to that portion of the Site. For the purposes of access, "reasonable best efforts" includes the payment of reasonable sums of money in consideration for access. Force majeure does not include

financial inability to complete the Work, increased cost of performance or non-extraordinary precipitation events.

k. “Future Costs” means reasonable non - natural resource damage costs allowed under State law, including but not limited to, costs that DEQ or the State of Montana incur after December 31, 2011, that are attributable to or associated with the Work at the Site and/or this AOC, including, but not limited to, costs that DEQ and the State of Montana incur in overseeing the Work at the Site, and all costs that DEQ will incur in reviewing or developing Deliverables submitted pursuant to this AOC, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this AOC, including, but not limited to, payroll costs, other oversight costs, contractor costs, travel costs, costs associated with taking over any of the Work, and laboratory costs.

l. “Montana Solid Waste Management Act” or “SWMA” means Sections 75-10-201 through 75-10-250, MCA.

m. “Montana Water Quality Act” or “WQA” means Sections 75-5-101 through 75-5-641, MCA.

n. “Party” means ExxonMobil or DEQ. “Parties” means ExxonMobil and DEQ.

o. “Past Costs” means reasonable costs that DEQ or the State incurred associated with the Discharge and allowed by State law, including, but not limited to, costs: (a) paid by DEQ or the State of Montana in connection with the Discharge between July 1, 2011 and December 31, 2011, or (b) incurred by DEQ or the State of Montana between July 1, 2011 and December 31, 2011, but paid after that date. Past Costs include, but are not limited to, payroll costs, contractor costs, costs associated with drafting, negotiating and executing this AOC, travel costs, and laboratory costs. Past Costs do not include those costs otherwise reimbursed to DEQ or the State of Montana under the Oil Pollution Act, 33 U.S.C. § 2701, *et seq.*, or any other applicable federal law.

p. “Schedule” means the schedule for completion of the Work and all Deliverables, as Approved by DEQ and incorporated into this AOC.

q. “Scope of Work” or “SOW” shall mean the initial Scope of Work for the Site, as set forth in Attachment A to this AOC. The Scope of Work is incorporated into this AOC and, except as provided in Paragraph 3, is an enforceable part of this AOC as are any modifications made thereto in accordance with this AOC. If necessary, DEQ may require Additional Work (consistent with Section XXVIII) to complete the Work under this AOC.

r. “Site” means the ExxonMobil Pipeline Company Silvertip Pipeline Crude Oil discharge to the Yellowstone River, Laurel, Yellowstone County, Montana, which occurred on or about July 1, 2011, comprising all places where the Discharge has come or may have come to be located. Based on currently available information, the Site is currently defined as River Areas A01 through C55 as reflected in SCAT Area Transition Reports A01 through C55. Subject to the dispute resolution procedures in Section XVII (Dispute Resolution), this Site boundary is subject to change based on new or different information collected as part of the Work or other data collected at the Site.

s. “State” means the State of Montana, including all its departments, agencies and instrumentalities.

t. “Work” means all activities and response actions ExxonMobil is required to perform under this AOC, including, but not limited to, investigation, evaluation, data analysis, laboratory analyses, database entries, preparation and development of Deliverables, risk assessments, cleanup, removal, response actions, and Additional Work as set forth in Section XXVIII.

u. “Work Plan” means a plan for implementing all or a portion of the Work, as well as any Approved modifications to a Work Plan, as provided for in Sections XXVII (Modifications) and XXVIII (Additional Work).

V. DEQ’S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DETERMINATIONS

DEQ makes, as set forth in Paragraphs 12 through 26 below, the following Findings of Facts, Conclusions of Law and Determinations:

12. DEQ is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.

13. DEQ administers the WQA and the regulations adopted thereunder.

14. ExxonMobil is a private corporation, registered to conduct business within the State of Montana, and is a "Person" as defined in Section 75-5-103(28), MCA.

15. ExxonMobil is the owner and operator of the Silvertip Pipeline (the “Pipeline”). The Pipeline is a 12-inch diameter pipeline that transports crude oil from Southern Montana and Wyoming to ExxonMobil’s refinery in Billings, Yellowstone County, Montana. The Pipeline crosses underneath the Yellowstone River (the “River”), south of Laurel, Yellowstone County, Montana.

16. On or about July 1, 2011, the Pipeline ruptured, discharging crude oil into the River. Crude oil was transported at and downstream of the point of discharge primarily via high-water flows, and was placed within the River and onto certain portions of lands in and adjacent to the River, which may include each of the following: the floodplain, backwaters, wet meadows, wetlands, side channels, fields, riverbeds and banks, and other areas.

17. The River, groundwater in both the saturated and unsaturated zones, and drainage systems at the Site are considered “state waters” under Section 75-5-103(34), MCA.

18. Section 75-5-605(2)(c), MCA, of the WQA states it is unlawful to discharge wastes into state waters without a permit from DEQ.

19. The Discharge occurred without a permit from DEQ.

20. The Discharge violated Section 75-5-605(2)(c), MCA, of the WQA.

21. The Discharge from the Pipeline into state waters caused a visible oil film on surface water in the River.

22. The visible oil film on the River violates the prohibition of a visible oil film on surface water in ARM 17.30.637(1)(b).

23. The Discharge has caused pollution of state waters in violation of Section 75-5-605(1)(a), MCA.

24. DEQ sent ExxonMobil a Violation Letter (the "VL") on August 17, 2011 that described ExxonMobil's alleged violations of the WQA and the SWMA. The VL recommended necessary corrective actions and requested that ExxonMobil submit a written commitment to implement the corrective actions and a proposed implementation schedule.

25. DEQ received ExxonMobil's written response to the VL on September 1, 2011. The response included a commitment to implement and complete the recommended corrective actions.

26. After the Effective Date, this AOC and SOW supersede the VL and control the Work at the Site.

27. Except as provided in Paragraph 2, none of DEQ's Findings of Fact and Conclusions of Law and Determinations shall constitute an admission of fact, law or liability by ExxonMobil and shall not create any rights with respect to any third party, and no third party shall have the benefit of any of the foregoing allegations and/or provisions.

VI. ORDER

28. Based on DEQ's Findings of Fact, Conclusions of Law and Determinations, it is hereby Ordered and Agreed that ExxonMobil shall comply with all provisions of this AOC, including, but not limited to, implementation of the Work as defined in this AOC and as described in Attachment A to this AOC, and all documents incorporated by reference into this AOC.

VII. NOTICES

29. All required notices under this AOC shall be sent in letter form and transmitted from the Parties via email and regular U.S. first class mail to the following individuals:

ExxonMobil

a. Tom Henson

C/O Scott Davies
ARCADIS
11000 Regency Parkway
Suite 205
Cary, North Carolina, 27518

(225) 324 5640 - phone
tom.s.henson@exxonmobil.com

b. Kurt Fischer

ExxonMobil Environmental Services Company
3225 Gallows Road
Room 8B 229

Fairfax, VA 22037

(703) 846 5956 - phone
kurt.w.fischer@exxonmobil.com

c. Scott Davies

ARCADIS
11000 Regency Parkway
Suite 205
Cary, North Carolina, 27518

(919) 415 2254 – phone
scott.davies@arcadis-us.com

d. Kevin Vaughan

Exxon Mobil Corporation
3225 Gallows Rd.
Fairfax, Virginia

(703) 846 4416 - phone

kevin.j.vaughan@exxonmobil.com

e. Bill Mercer

Holland & Hart LLP
401 N. 31st Street
Suite 1500
Billings, MT 59101

(406) 252 2166 - phone
wwmerc@hollandhart.com

DEQ

a. Laura Alvey

Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, MT 59620-0901

(406) 841 5062- phone
lalvey@mt.gov

b. Katherine Haque-Hausrath

Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, MT 59620-0901

(406) 841-5019- phone
khaquehausrath@mt.gov

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

30. ExxonMobil has retained ARCADIS as the lead Contractor to perform the Work. ExxonMobil shall notify DEQ of the name(s) and qualification(s) of any other Contractor(s) or subcontractor(s) retained to perform the Work at least ten Days prior to commencement of such Work.

31. DEQ retains the right to disapprove, upon a showing of good cause, of any or all of the Contractors and/or subcontractors retained by ExxonMobil, including previously selected Contractors. If DEQ disapproves of a Contractor selected by ExxonMobil, DEQ must provide a written disapproval specifically identifying good cause for its disapproval. If DEQ provides written disapproval of a selected Contractor, ExxonMobil shall select a different Contractor and shall notify DEQ of that Contractor's name and qualifications within 30 Days of DEQ's disapproval. If ExxonMobil does not agree with DEQ's determination, then ExxonMobil has the right to invoke the dispute resolution procedures in Section XVII. Schedules will be reasonably adjusted to accommodate changes in Contractors, without prejudice or penalty to ExxonMobil. Any reasonable delay occasioned by this process shall constitute a Force Majeure event. For the purposes of this Paragraph 31, "good cause" shall mean: (i) any violation of law that materially impairs the Contractor's or subcontractor's ability to perform the required Work; or (ii) any deficiencies in the Contractor's or subcontractor's qualifications or ability to reasonably perform the required Work.

32. ExxonMobil has designated Tom Henson as its project coordinator. To the greatest extent reasonably possible, ExxonMobil's project coordinator shall be present on the Site or readily available during Work at the Site. ExxonMobil reserves the right to designate a different project coordinator at its discretion, subject to the provisions of Paragraph 33.

33. DEQ retains the right to disapprove, upon a showing of good cause, of any designated project coordinator. If DEQ disapproves of the designated project coordinator selected by ExxonMobil, DEQ must provide a written disapproval specifically identifying the good cause for its disapproval. If DEQ disapproves of the designated project coordinator, ExxonMobil shall select a different project coordinator and shall notify DEQ of that person's name, address, telephone number, and qualifications within 30 Days following DEQ's disapproval. If ExxonMobil does not agree with DEQ's determination, then ExxonMobil has the right to invoke the dispute resolution procedures in Section XVII. Schedules will be adjusted to accommodate changes in project coordinators, without prejudice or penalty to ExxonMobil. Any delay occasioned by this process shall constitute a Force Majeure event. For purposes of this Paragraph 33, "good cause" shall mean: (i) any violation of law that materially impairs the project coordinator's ability to perform the required Work; (ii) any deficiency in the project coordinator's qualifications or ability to reasonably perform the required Work.

34. Receipt by the individuals listed in Section VII (Notices) on behalf of ExxonMobil of any notices or communication from DEQ relating to this AOC shall constitute receipt by ExxonMobil.

35. DEQ has designated Laura Alvey as its project coordinator. Except as otherwise provided in this AOC, ExxonMobil shall direct all submissions required by this AOC to DEQ's project coordinator and personnel listed in Section VII (Notices).

36. DEQ and ExxonMobil shall have the right to change their respective designated project coordinators, subject to DEQ's rights regarding ExxonMobil's project coordinator. ExxonMobil and DEQ shall notify the other Party at least 10 Days before such a change is made. The initial notification may be made orally, but shall be followed by a written notice consistent with Section VII (Notices) within 10 Days.

IX. WORK TO BE PERFORMED

37. ExxonMobil shall conduct all Work necessary to implement the SOW and, if necessary, any Additional Work required by DEQ (in accordance with Section XXVIII). The Work shall be conducted in accordance with this AOC and all applicable federal, state and local laws and regulations.

38. At the direction of DEQ, ExxonMobil shall prepare Work Plans to implement the SOW and all Work shall be conducted according to a Schedule. DEQ may require changes to the Work Plans or Schedule if DEQ determines such changes are reasonably necessary to ensure compliance with this AOC. Any subsequent modifications to a Work Plan or Schedule Approved by DEQ shall be incorporated into and become fully enforceable under this AOC.

39. All Deliverables from ExxonMobil must be submitted to DEQ concurrently in both hard copy and modifiable electronic format.

40. DEQ may require changes to the Deliverables submitted by ExxonMobil that are reasonably necessary to ensure adequate compliance with this AOC. When DEQ comments on and/or directs ExxonMobil to make changes to Deliverables, the following procedures shall apply:

a. ExxonMobil shall have 30 Days from the Day of receipt of DEQ's comments to incorporate all comments or changes to the Deliverable required by DEQ and agreed to by ExxonMobil, unless a different time period is specified by DEQ or requested by ExxonMobil and approved, in writing, by DEQ.

b. In the event ExxonMobil does not agree with DEQ's comments or directed changes to a Deliverable, DEQ shall meet with ExxonMobil to discuss the comments. Such request for a meeting must be made by ExxonMobil in writing within 20 Days of receipt of DEQ's comments. If the request is not made within this timeframe and ExxonMobil does not provide a good faith basis for not requesting the meeting within the 20- day period, ExxonMobil shall be deemed to have waived its right to a meeting. ExxonMobil and DEQ shall make a good faith effort to meet within 25 Days of ExxonMobil's request for a meeting. If DEQ deems ExxonMobil, after timely requesting a meeting, has not made a good faith effort to meet within the 25 Day period, DEQ may, in writing, provide notice consistent with Section VII (Notices) that ExxonMobil's right to a meeting has been deemed waived. If DEQ agrees that any of its comments or directed changes should be modified based upon the

meeting between DEQ and ExxonMobil, DEQ shall document that decision by sending a letter modifying its comments or directed changes within 30 Days after the meeting subject to Section XXVII (Modifications). ExxonMobil must then resubmit the Deliverable in accordance with DEQ's direction. For purposes of this paragraph, written notice shall be consistent with Section VII (Notices).

41. If ExxonMobil fails to comply with the procedures provided for in Paragraph 40, or if DEQ determines that additional changes or additions were included in a resubmittal without identification, DEQ may complete the Deliverable or any portion thereof and seek reimbursement from ExxonMobil for related Future Costs. To the extent that DEQ conducts or takes over some of the Work, ExxonMobil shall incorporate and integrate information supplied by DEQ into Deliverables or Work as directed by DEQ, subject to Section XXVII (Modifications) and Section XVII (Dispute Resolution).

42. Neither failure of DEQ to expressly approve or disapprove ExxonMobil's Deliverables within a specified time period, nor the absence of comments, shall be construed as Approval by DEQ. DEQ agrees to exercise its reasonable best efforts to notify ExxonMobil, in writing, within 14 Days of receipt of a Deliverable if it will not be able to provide comment or approval of a Deliverable within 30 Days of receipt. DEQ shall also indicate in the written notice when it will provide comment to or approval of the Deliverable. For purposes of this paragraph, written notice shall be consistent with Section VII (Notices).

43. Except as otherwise provided for in this AOC and SOW, ExxonMobil shall not commence any portion of the Work unless that portion is Approved by DEQ in advance and in conformance with the terms of this AOC, unless otherwise specifically directed by the EPA, or as specifically ordered by a court of appropriate jurisdiction or federal agency of appropriate jurisdiction. However, ExxonMobil shall have the right during execution of the Work to collect additional samples adjacent to or within proximity to sample locations and/or depths approved by DEQ. In addition to the analysis required by DEQ, ExxonMobil is permitted to conduct analysis on any samples so long as ExxonMobil's additional analysis will not prejudice the ability to conduct the DEQ-required analysis (e.g., in the event there is a limited amount of media for a sample, the DEQ-required sample should be analyzed first).

X. SITE ACCESS/PERMITS

44. To the extent that ExxonMobil owns, operates, controls, or otherwise has the legal authority under access agreements to any portion of the Site, it shall provide DEQ, and its representatives, including Contractors, with access at all reasonable times to the Site for the purpose of conducting any activity related to this AOC.

45. ExxonMobil shall use reasonable best efforts to secure access to all portions of the Site as needed to implement Work under this AOC. If ExxonMobil, after exercising reasonable best efforts, is unable to gain access to a location that DEQ has determined must be accessed for Work required under this AOC or is unable to obtain permits associated with Work, DEQ, upon its discretion or at the request of ExxonMobil and to the extent authorized by law, agrees to assist ExxonMobil in gaining such access. For the purposes of this paragraph, "reasonable best efforts" includes the payment of reasonable sums of money in consideration for access. If, even with DEQ's assistance, such access is still unavailable to ExxonMobil, DEQ retains the right to conduct the Work itself. Consistent with the

definition of Future Costs, if DEQ performs the Work, or utilizes its own contractors to perform the Work, ExxonMobil shall reimburse the State pursuant to Section XVI (Reimbursement of Costs).

46. Notwithstanding any provision of this AOC, DEQ retains all of its access authorities and rights, including enforcement authorities related thereto, under the WQA and SWMA, and any other applicable statutes or regulations.

47. DEQ agrees to provide ExxonMobil with access to any portion of the Site that it owns, operates, controls, or to which it otherwise has access rights. If ExxonMobil, after exercising reasonable best efforts, is unable to obtain access to a portion of the Site owned by another entity of the State, DEQ agrees to reasonably assist ExxonMobil in obtaining such access. Consistent with the definition of Future Costs, if DEQ performs the Work, or utilizes its own contractors to perform the Work, ExxonMobil shall reimburse the State pursuant to Section XVI (Reimbursement of Costs).

XI. ACCESS TO INFORMATION

48. Except as otherwise provided for in Deliverables, ExxonMobil shall provide to DEQ, within 60 Days of DEQ's request, copies of all technical documents and information within its reasonable possession or control or that of its Contractors or agents related to the Work; such technical documents and information include, but are not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, field books, daily logs, receipts, technical reports, sample transport records, correspondence, or other documents or information related to the Work. Unless privileged or otherwise protected from disclosure, ExxonMobil shall also make available to DEQ, for purposes of investigation and enforcement of this AOC, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

49. ExxonMobil may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by State law or subject to protection under the Uniform Trade Secrets Act, Section 30-14-401, *et seq.*, MCA. If ExxonMobil asserts such a privilege or protection in lieu of providing documents, it shall provide DEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege or protection asserted. However, no final form of Deliverables created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

50. DEQ shall provide access for copying to ExxonMobil, within 60 Days of ExxonMobil's request, all non-privileged and non-protected technical documents and information within its reasonable possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this AOC; such technical documents and information include, but are not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, field books, daily logs, receipts, technical reports, sample transport records, correspondence, or other documents or information related to the Work.

51. DEQ may assert that certain documents, records and other information are privileged or confidential under the attorney-client privilege or any other privilege or protection recognized by State law. If DEQ asserts such a privilege or protection in lieu of providing documents, it shall provide

ExxonMobil with the following: 1) the title of the document, record or information; 2) the date of the document, record or information; 3) the name and title of the author of the document, record or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record or information; and 6) the privilege or protection asserted.

XII. RECORD RETENTION

52. Until five years after ExxonMobil's receipt of DEQ's notification pursuant to Section XXIX (Notice of Completion of Work), ExxonMobil shall preserve and retain all non-identical copies of technical records and documents (including technical records or documents in electronic form) now in its possession or control or that come into its possession or control that relate to the performance of the Work with respect to the Site, regardless of any corporate retention policy to the contrary, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ. Until five years after ExxonMobil's receipt of DEQ's notification pursuant to Section XXIX (Notice of Completion of Work), ExxonMobil shall also instruct its Contractors and agents to preserve all technical documents, records, and other information (including but not limited to field logs, photographs, chain of custody forms, raw data, and manifests) relating to performance of the Work with respect to the Site, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ.

53. At the conclusion of this technical document retention period, ExxonMobil shall notify DEQ at least 90 Days prior to the destruction of any such technical records or documents, and, upon request by DEQ, unless such technical records and documents (including technical records or documents in electronic form) have already been provided to DEQ, ExxonMobil shall deliver any such records or documents to DEQ. ExxonMobil may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by State law. If ExxonMobil asserts such a privilege, it shall provide DEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege or protection asserted. However, no final form of Deliverables created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

XIII. COMPLIANCE WITH OTHER LAWS

54. ExxonMobil shall perform all actions required pursuant to this AOC in accordance with all applicable local, State and federal laws and regulations. If applicable local, State and/or federal laws or regulations conflict, then ExxonMobil shall comply with federal regulations and its compliance shall not be deemed a violation of this AOC. For purposes of this paragraph, laws or regulations are not in conflict if one is more stringent than the other and compliance with both is possible.

55. By entering into this AOC, and as of the Effective Date, ExxonMobil has, to the best of DEQ's knowledge, been diligently pursuing investigation and remediation activities pursuant to applicable State and federal law.

XIV. EMERGENCY RESPONSE AND NOTIFICATION

56. In the event of any action or occurrence related to performance of the Work attributable to ExxonMobil that causes or threatens a discharge or release from or within the Site that is likely to present an immediate threat to public health, safety, or welfare or the environment, ExxonMobil shall immediately take all reasonably appropriate action. ExxonMobil shall take these actions in accordance with all applicable provisions of this AOC in order to prevent, abate or minimize such discharge, release or endangerment caused or threatened by the discharge or release. ExxonMobil shall also immediately notify DEQ's project coordinator both telephonically and via electronic mail using the contact information provided in Section VII (Notices). In the event that ExxonMobil fails to take reasonably appropriate action as required by this paragraph, and DEQ takes such action instead, ExxonMobil shall reimburse DEQ for all costs of the response action pursuant to Section XVI (Reimbursement of Costs).

57. ExxonMobil shall submit a written report to DEQ within 7 Days after the notification of each discharge or release as described in Paragraph 56, setting forth the events that occurred and, in the event such new discharge was caused by ExxonMobil or anyone acting on its behalf, the measures taken or to be taken to mitigate any discharge, release or endangerment caused or threatened by the discharge or release and to prevent the reoccurrence of such a discharge or release.

58. ExxonMobil shall immediately notify DEQ's project coordinator orally if Site conditions related to any Work Plan change and shall follow up with written notice to DEQ's project coordinator and other DEQ personnel listed in Section VII (Notices) within 3 Days of such occurrence. For purposes of this paragraph, written notice shall be consistent with Section VII (Notices).

59. Notwithstanding any provision of this AOC, DEQ retains all of its emergency response and notification authorities and rights, including enforcement authorities related thereto, under the WQA and SWMA, and any other applicable statutes or regulations.

XV. AUTHORITY OF DEQ PROJECT COORDINATOR

60. The DEQ project coordinator shall be responsible for overseeing ExxonMobil's implementation of this AOC. The DEQ project coordinator shall have authorities provided in this AOC, applicable State law and applicable regulations, including the authority, pursuant to the terms of this AOC and upon a reasonable basis, to halt, conduct or take over any Work required by this AOC. Absence of the DEQ project coordinator from the Site shall not be cause for stoppage of Work unless specifically directed by the DEQ project coordinator or as necessary to address an emergency situation as provided in Section XIV above. The DEQ project coordinator may temporarily assign any of these duties to another employee of DEQ or DEQ contractor during periods of leave upon written notice to ExxonMobil. For purposes of this paragraph, written notice shall be consistent with Section VII (Notices).

XVI. REIMBURSEMENT OF COSTS

61. ExxonMobil shall reimburse State and DEQ Past Costs and Future Costs.

a. Past Costs. On the Effective Date of this AOC, ExxonMobil shall pay to the State a one-time sum of \$760,390.61 dollars, which shall represent reimbursement for the State's Past Costs for work performed by the State and State agents related to the Site prior to December 31, 2011.

b. Future Costs. On a monthly basis, DEQ will send ExxonMobil a bill requiring payment that includes detailed invoices and supporting documentation showing the Future Costs incurred by the State and its contractors or subcontractors. ExxonMobil agrees to reimburse the State within 30 Days of receipt of each accounting that identifies Future Costs.

ExxonMobil shall make all payments by check made payable to DEQ and sent to:

Montana Department of Environmental Quality
Office of Financial Services
P.O. Box 200901
Helena, MT 59620-0901

All payments shall be accompanied by a transmittal letter identifying the name and address of the Party making payment, and shall specify that the payment is to be applied to the ExxonMobil Silvertip Pipeline Site. ExxonMobil may choose to make payments via electronic wire transfer as follows:

Bank Name:	US Bank NA, Montana
Bank ABA # (routing):	092900383
Bank Address:	302 N. Last Chance Gulch, Helena, MT 59601
Account Name:	State of Montana
Account Number:	156041200221
Federal ID Number:	81-0302402
Third Party Information:	On the wire in the description (OBI) field include: "ExxonMobil Silvertip Pipeline Site"

62. Payments of DEQ's Past Costs and Future Costs under this section are made pursuant to Section 75-10-715(2)(a), MCA, and in response to the Notice of Potential Liability sent pursuant to Section 75-10-712, MCA, from DEQ to ExxonMobil on December 8, 2011, as reimbursement for payment of Past Costs and Future Costs as defined in this AOC. Payment of other State agencies' Past Costs and Future Costs shall be deposited in the fund from which those costs were paid.

63. In the event that payments for Future Costs are not made within 30 Days of ExxonMobil's receipt of a bill, interest on the unpaid balance shall accrue in the manner specified for judgments in Section 25-9-205, MCA. The interest on Future Costs shall begin to accrue on the date the bill is due and shall continue to accrue until the date of payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to DEQ by virtue of ExxonMobil's failure to make timely payments under this section, including but not limited to, payment of Stipulated Penalties pursuant to Section XIX.

64. ExxonMobil may, on a line item basis, object to any of the Future Costs billed under this section if ExxonMobil believes the State has made a mathematical error or believes the State's costs, a contractor's costs or a subcontractor's costs are not within the definition of Future Costs, or are not allowed pursuant to the terms of this AOC. Such objection shall be made in writing within 30 Days of receipt of the bill and must be sent to DEQ's project coordinator and to Denise Martin, DEQ Site Response Section Manager at:

Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, MT 59620-0901

Denise Martin's telephone number is 406-841-5060 and her email is demartin@mt.gov. Any such objection shall specifically identify the costs being objected to and the basis for objection. In the event of an objection, ExxonMobil shall within the 30 Day period pay all uncontested Future Costs in the manner described in this section.

65. If DEQ prevails in the objection pursuant to Paragraph 64 or for any portion thereof, within 15 Days of the resolution of the dispute, ExxonMobil shall pay the sums due (with accrued interest, in the manner specified for judgments in Section 25-9-205, MCA) to DEQ in the manner described in this Section XVI (Reimbursement of Costs). The objection procedures set forth in Paragraphs 64 and 65, in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding ExxonMobil's obligation to reimburse Future Costs.

XVII. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this AOC, the dispute resolution procedures of this section shall be ExxonMobil's exclusive mechanism for resolving disputes arising under this AOC.

67. ExxonMobil shall attempt to resolve any disagreements with DEQ concerning implementation of this AOC, including any Work Plan, Work, Schedule, Deliverable or Future Costs expeditiously and informally by notifying DEQ's project coordinator in writing within 10 Days after ExxonMobil identifies the dispute. If the Parties fail to resolve such a dispute informally within 21 Days (the "Negotiation Period") after ExxonMobil identifies the dispute in writing, ExxonMobil may invoke the dispute resolution procedure in Paragraphs 68 and 70. The Negotiation Period may be extended at the sole discretion of DEQ.

68. After the Negotiation Period is complete, ExxonMobil shall have 30 days to supplement its submissions to DEQ related to the disagreement. In response, DEQ has 30 days thereafter to respond and supplement its findings.

69. Any agreement reached by the Parties pursuant to Paragraph 67 shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this AOC.

70. If the Parties are unable to reach an agreement within the Negotiation Period set forth in Paragraph 67 and the process set forth in Paragraph 68, DEQ shall make a final determination and ExxonMobil, in its sole discretion, shall have the opportunity to file for judicial review in a court of appropriate jurisdiction. ExxonMobil must initiate judicial review within thirty Days of receipt of DEQ's final determination. An administrative record of any dispute brought pursuant to this section XVII shall be maintained by DEQ and shall contain any correspondence and documents submitted to DEQ by ExxonMobil related to the subject of the dispute, all documents produced and submitted to

DEQ pursuant to this Section XVII and all documents cited, considered or relied upon by DEQ in making its decision on the dispute at issue.

71. ExxonMobil's remaining obligations under this AOC shall not be tolled by submission of any objection for dispute resolution under this section. Following resolution of the dispute, as provided by this section, ExxonMobil shall fulfill the requirement that was the subject of the dispute in accordance with the agreement or decision reached.

72. Failure of ExxonMobil to invoke the Negotiation Period, or proceed with judicial review within the timeframes provided, results in a waiver of the right to request further dispute resolution of that particular dispute.

XVIII. FORCE MAJEURE

73. Consistent with Section IV (Definitions), Paragraph 11(j), ExxonMobil agrees to perform all requirements of this AOC according to the Schedule(s) Approved by DEQ, as may be modified pursuant to the terms of this AOC, unless the performance is delayed or prevented by a Force Majeure.

74. If any event occurs or has occurred that reasonably may delay or prevent the performance of any obligation under this AOC, whether or not caused by a Force Majeure event, ExxonMobil shall notify DEQ orally within forty-eight hours of when ExxonMobil first knew or should have known that the event reasonably might cause a delay. Within 7 Days thereafter, ExxonMobil shall provide to DEQ in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; ExxonMobil's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of ExxonMobil, such event may cause or contribute to an endangerment to public health, safety, or welfare or the environment. Failure to comply with the above requirements shall preclude ExxonMobil from asserting any claim of Force Majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

75. ExxonMobil shall bear the burden of proving by a preponderance of the evidence that any failure to comply with the requirements of this AOC or of an Approved Work Plan or other Deliverable is due to Force Majeure. ExxonMobil reserves its rights to invoke the dispute resolution process under Section XVII.

76. If DEQ agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this AOC that are affected by the Force Majeure event will be extended by DEQ for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If DEQ does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, DEQ will notify ExxonMobil in writing of DEQ's decision. If DEQ agrees that the delay is attributable to a Force Majeure event, DEQ will notify ExxonMobil in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event, including any extension of time for performance of any other obligations. The determination that a Force Majeure event has occurred shall not result in a finding of noncompliance with this AOC on behalf of ExxonMobil.

XIX. STIPULATED PENALTIES

77. ExxonMobil shall be liable to DEQ for stipulated penalties in the amounts set forth in this section for failure to comply with the requirements of this AOC specified below, unless excused under Section XVIII (Force Majeure), Section XVII (Dispute Resolution) or otherwise by the DEQ in writing. "Compliance" by ExxonMobil shall include completion of all activities required by this AOC, within the specified time Schedule(s), as well as submission of Deliverables within the specified time Schedule(s), and compliance with Approved SEP plans and payment of DEQ Past and Future Costs as specified in Section XVI (Reimbursement of Costs).

78. Stipulated Penalty Amounts

a. In the event that ExxonMobil violates the provisions of this AOC, DEQ may assess, and ExxonMobil shall accrue and pay, by tendering to DEQ within 45 Days of ExxonMobil's receipt of a written demand from DEQ for payment of such penalties, the sum set forth below as stipulated penalties for each stipulated penalty event unless subject to subsections (e) and (h). Stipulated penalties may be assessed for each day during which such violation, delay, or failure occurs or continues, including weekends or holidays unless subject to subsections (e) and (h). The demand shall specify the events giving rise to ExxonMobil's asserted liability for stipulated penalties and the amount of such penalties. In evaluating whether to exercise its discretion to impose any such penalties, DEQ shall consider the good faith efforts of Exxon Mobil to comply with its obligations herein.

b. The following stipulated penalties shall accrue per violation per day for any noncompliance:

<u>Days of Violation</u>	<u>Amount/Day</u>
1-14 Days	\$ 500
15-30 Days	\$ 2,500
31 or more Days	\$ 5,000

c. Stipulated penalties shall not begin to accrue until DEQ has given ExxonMobil written notice of the noncompliance and ExxonMobil has failed to remedy the noncompliance within 15 Days of receiving written notice of such alleged noncompliance consistent with Section VII (Notices), or if the noncompliance cannot be remedied within 15 days with the exercise of reasonable best efforts, ExxonMobil has, within 15 days, entered into a compliance agreement to remedy the noncompliance within a reasonable time agreed to by DEQ. For purposes of this paragraph, written notice shall be a certified letter identifying the exact violation at issue sent pursuant to Section VII (Notices). As soon as reasonably possible, and within the 15 Day period, DEQ shall provide ExxonMobil an opportunity to confer regarding the non-compliance matter (which may be done telephonically). If, on the 16th Day following receipt of this written notice, ExxonMobil has not cured a noncompliance that can be remedied within 15 days with the exercise of reasonable best efforts, ExxonMobil shall be liable for stipulated penalties from the date of notice of noncompliance and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. For a noncompliance that cannot be remedied within 15 days with the exercise of reasonable best efforts, if ExxonMobil fails to cure a noncompliance within the time established in a compliance agreement, ExxonMobil shall be liable for stipulated penalties from the date of notice of noncompliance and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. DEQ shall send ExxonMobil a written demand for payment of the penalties.

d. Nothing in this AOC shall prevent the simultaneous accrual of stipulated penalties for separate violations of this AOC.

e. All penalties accruing under this section shall be due and payable to DEQ within 45 Days of ExxonMobil's receipt from DEQ of a demand for payment of the penalties, unless ExxonMobil invokes the dispute resolution procedures under Section XVII (Dispute Resolution). All payments to DEQ under this section shall be paid according to the procedures outlined in Section XVI (Reimbursement of Costs), and shall indicate that the payment is for stipulated penalties.

f. Copies of checks or wire transfers paid pursuant to this section, and accompanying transmittal letters, shall be sent to DEQ's project coordinator and to:

Katherine Haque-Hausrath
Special Assistant Attorney General
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

g. The payment of penalties shall not alter in any way ExxonMobil's obligation to complete performance of the Work required under this AOC.

h. Penalties shall continue to accrue up to the dispute resolution period and shall be tolled during the dispute resolution period and need not be paid until 30 Days after the dispute is resolved by agreement or by judicial decision. If ExxonMobil prevails in the dispute resolution process any penalties relating to that specific dispute shall be voided.

i. If ExxonMobil fails to pay stipulated penalties when due, DEQ may institute proceedings to collect the penalties, as well as interest. ExxonMobil shall pay interest on the unpaid balance, which shall begin to accrue 30 Days after the date of demand made pursuant to subsection (c) above. Nothing in this AOC shall be construed as prohibiting, altering, or in any way limiting the ability of DEQ to seek any other remedies or sanctions available by virtue of ExxonMobil's violation of this AOC or of the statutes and regulations upon which it is based. Notwithstanding any other provision of this section, DEQ may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

j. DEQ hereby finds that the provisions of this AOC, including this Section, are designed to protect the public health, safety, and welfare and the environment by achieving a prompt, complete and efficient response and cleanup at the Site. These stipulated penalties provisions are integral and essential to the Parties' desire that the provisions of this AOC be, to the maximum extent achievable, self-executing and self-enforcing.

XX. CIVIL PENALTIES AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

79. The Parties have agreed that settlement of this matter including this Section XX (Civil Penalties and Supplemental Environmental Projects) without further litigation is the most appropriate means of resolving this matter.

80. Pursuant to Section 75-5-631, MCA, the nature of the violations, ExxonMobil's agreement to perform a Supplemental Environmental Project(s) ("SEP") and other relevant factors, DEQ has determined that an appropriate civil penalty against ExxonMobil is in the amount of \$1,600,000.00. This total penalty will be divided between ExxonMobil's cash payment to DEQ, as set forth in Paragraph 82, and the successful implementation of DEQ-Approved SEPs, instituted pursuant to the terms of this Section XX (Civil Penalties and Supplemental Environmental Projects) and involving expenditure no less than the amount provided for in Paragraph 83.

81. ExxonMobil consents to the issuance of this AOC and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph, including the performance of the SEPs. The Parties agree that DEQ decisions under Paragraph 83 of this Section XX (Civil Penalties and Supplemental Environmental Projects) are not subject to Section XVII (Dispute Resolution).

82. On the Effective Date of this AOC, ExxonMobil shall pay to DEQ a cash civil penalty in the amount of \$300,000.00. The cash penalty must be paid by cashiers or certified check, made payable to the "Montana Department of Environmental Quality," and sent to:

John J. Arrigo, Administrator
Enforcement Division
Montana Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

83. ExxonMobil shall spend \$1,300,000.00 on SEPs. ExxonMobil shall include all documentation of the expenditures made in connection with the SEPs as part of the SEP completion report required under Paragraph 87 (the "SEP Completion Report").

a. Within 120 Days of the Effective Date of this AOC, ExxonMobil shall submit to DEQ a SEP proposal(s) that describes the SEP, its implementation, and a preliminary budget in accordance with the *Montana Department of Environmental Quality, Enforcement Division: Supplemental Environmental Projects Policy* (Rev. April 1, 2008) (the "DEQ SEP Policy"). DEQ will review the SEP proposal(s), and preliminarily approve or disapprove of the SEP proposal. The SEP proposal should conform to Section V of the DEQ SEP Policy.

b. Within 120 Days of DEQ preliminary approval of a SEP proposal, ExxonMobil shall submit to DEQ a detailed SEP Plan that describes the SEP and its implementation, in accordance with the DEQ SEP Policy (the "SEP Plan"). The SEP Plan must include, but is not limited to: a detailed description of the SEP, budget, scheduled milestones, Contractors, and a description of the intended public health or environmental benefits. The SEP Plan must also include a provision demonstrating compliance with SEP Reporting Requirements set forth in Paragraph 87.

c. DEQ will review the SEP Plan and provide comments. ExxonMobil shall adjust the SEP Plan in accordance with DEQ's comments, and resubmit the updated SEP Plan to DEQ within 30 Days of receipt of DEQ's comments. Upon DEQ-Approval of the SEP Plan, ExxonMobil shall begin implementation of the SEP by the deadline provided in the DEQ Approved SEP Plan.

84. If, within one year of the Effective Date, the Parties are unable to agree on SEP(s) in the amount of \$1,300,000.00, then DEQ may require ExxonMobil to pay the \$1,300,000.00 minus the amount of the Approved SEP(s).

85. ExxonMobil shall not propose SEP(s) pursuant to this AOC that are otherwise required by any federal, state or local law or regulation; nor may ExxonMobil propose pursuant to this AOC, SEP(s) required by any other agreement, grant or injunctive relief. ExxonMobil shall certify compliance with this paragraph at the time of proposing any SEP.

86. If any Force Majeure event occurs that may delay completion of the SEP(s) and/or cause a failure to meet a scheduled milestone, ExxonMobil shall provide notice and take all actions in conformity with Section XVIII (Force Majeure).

87. SEP Reporting Requirements:

a. SEP Completion Report. The SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any operating problems encountered and the solutions thereto;
- iii. Itemized costs;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this AOC and the DEQ-Approved SEP Plan; and
- v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- vi. In itemizing its costs in the SEP Completion Report, ExxonMobil shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

b. Periodic Reports. ExxonMobil shall submit any additional reports required by the SEP Plan to DEQ in accordance with the schedule and requirements recited therein (“Periodic Reports”).

c. ExxonMobil agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections a. and b. above shall be deemed a violation of this AOC and ExxonMobil shall become liable for stipulated penalties as set forth in Section XIX (Stipulated Penalties).

d. Respondent shall submit all notices and reports required by this Section XX (Civil Penalties and Supplemental Environmental Projects) to:

John J. Arrigo, Administrator
Enforcement Division
Montana Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

88. After receipt of the SEP Completion Report described in Paragraph 87(a), DEQ shall notify ExxonMobil, in writing, regarding: i) any deficiencies in the SEP Completion Report itself along with a grant of an additional 30 Days for ExxonMobil to correct any deficiencies; or ii) indicate that DEQ concludes that the SEP has been completed satisfactorily; or iii) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Section XIX (Stipulated Penalties) of this AOC.

89. If upon review of the SEP Completion Report, DEQ determines that the actual cost of the SEP did not meet the amount required in Paragraph 83, ExxonMobil shall pay DEQ the remainder of the difference of the required SEP cost amount and the actual SEP costs. DEQ will notify ExxonMobil in writing of any required SEP payment. ExxonMobil shall pay the amount in accordance with Paragraph 82.

90. Any prepared public statement, oral or written in print, film, or other media, made by ExxonMobil making reference to the SEP shall include the following language, “This project was undertaken in connection with the settlement of an enforcement action taken by the Montana Department of Environmental Quality for violations of the Montana Water Quality Act.”

91. This Section XX (Civil Penalties and Supplemental Environmental Projects) shall not relieve ExxonMobil of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute DEQ approval of any equipment or technology installed by ExxonMobil in connection with the SEP.

XXI. COVENANT NOT TO SUE BY DEQ/RELEASE

92. Subject to the Reservations of Rights below, DEQ fully and forever releases and discharges ExxonMobil Pipeline Company, Exxon Mobil Corporation, and their divisions, subsidiaries, affiliates, any predecessors and successors in interest, and their officers, attorneys, directors, shareholders, employees, agents, contractors, subcontractors, and representatives, for any and all claims and allegations of any nature whatsoever for the investigation and remediation of the Discharge, performance of the Work, the Discharge, Past or Future Costs or to assess further civil or administrative penalties related to the Discharge arising from violations of State law, federal law, and any other provisions of law, including, but not limited to, the WQA , CECRA and the SWMA (the “Matters Addressed”).

93. Subject to the Reservation of Rights below, DEQ covenants not to sue, execute judgment or take any civil, judicial or administrative action under federal, state, local or common law (other than enforcement of this AOC), including requesting another State agency to initiate an action based on or resulting from the Discharge, or to seek any costs, penalties, contribution or attorneys’ fees against ExxonMobil Pipeline Company, Exxon Mobil Corporation, and their divisions, subsidiaries, affiliates, any predecessors and successors in interest, and their officers, attorneys, directors, shareholders, employees, agents, contractors, subcontractors, and representatives for the Matters Addressed. This covenant not to sue and release in this Section XXI shall take effect upon the Effective Date and is conditioned upon the payment of Past Costs and payment of Civil Penalties. This covenant not to sue and the release in this Section XXI extends only to ExxonMobil Pipeline Company, Exxon Mobil Corporation, and their divisions, subsidiaries, affiliates, any predecessors and successors in interest, and their officers, attorneys, directors, shareholders, employees, agents, contractors, subcontractors, and representatives and does not extend to any other person.

XXII. RESERVATION OF RIGHTS BY DEQ

94. Except as specifically provided in this AOC, nothing in this AOC shall limit the power and authority of DEQ to take, direct, or order all actions necessary to protect public health, safety, or welfare or the environment or to prevent, abate, or minimize an actual or threatened discharge or release of pollution from the Site. Further, nothing in this AOC shall prevent DEQ from seeking to enforce the terms of this AOC, including actions for injunction and/or civil penalties pursuant to the WQA for future substantial noncompliance with this AOC, from taking other action as it deems appropriate and necessary, or from requiring ExxonMobil in the future to perform additional activities pursuant to the WQA, the SWMA, or any other applicable law.

95. Nothing in this AOC precludes DEQ from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not Parties to this AOC. Nothing herein diminishes the right of DEQ to pursue any such persons to obtain additional Past or Future Costs or response action.

96. The covenant not to sue and release set forth in Section XXI above does not pertain to any matters other than those expressly identified therein, including claims or matters arising from the past, present, or future disposal, discharge or threat of discharge of pollution unrelated to the Discharge.

This AOC is without prejudice to any rights that the State may have against ExxonMobil under criminal law. DEQ reserves, and this AOC is without prejudice to, all rights against ExxonMobil with respect to:

- a. Claims based on a failure by ExxonMobil to meet a requirement of this AOC;
- b. Claims for damages for injury to, destruction of, or loss of natural resources and for the costs of assessing and litigating any claims for natural resources damages.

97. In the event DEQ determines that ExxonMobil has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to public health, safety or welfare or the environment, DEQ may assume the performance of all or any portion of the Work as DEQ determines necessary. ExxonMobil may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute DEQ's determination that takeover of the Work is warranted under this paragraph. Costs incurred by DEQ in performing the Work pursuant to this paragraph shall be considered Future Costs that ExxonMobil shall pay pursuant to Section XVI (Reimbursement of Costs). Notwithstanding any other provision of this AOC other than Section XVII (Dispute Resolution), DEQ retains all authority and reserves all rights to take any and all response or removal authorized by law. ExxonMobil's requirement to pay Future Costs in regards to this Paragraph 97 shall be tolled pending conclusion of the dispute resolution process.

XXIII. COVENANT NOT TO SUE BY EXXONMOBIL/RELEASE

98. Other than as set forth in Section XVII (Dispute Resolution) and subject to the Reservations of Rights below, ExxonMobil fully and forever releases and discharges the State and its divisions, agencies, departments, officers, attorneys, directors, employees, agents, contractors, subcontractors, and representatives, for any and all claims and allegations of any nature whatsoever arising out of or related to the Discharge, the Work, Past or Future Costs, or this AOC, including, but not limited to the claims set forth in Paragraph 99, subsections (a) through (d).

99. Other than as set forth in Section XVII (Dispute Resolution) and Section XXIV (Reservation of Rights by ExxonMobil), ExxonMobil covenants not to sue and agrees not to assert any and all direct or indirect claims or causes of action against the State and its divisions, agencies, departments, officers, attorneys, directors, employees, agents, contractors, subcontractors, and representatives arising out of or related to the Discharge, the Work, Past or Future Costs, or this AOC, including, but not limited to:

- a. Any claim under federal, State or local statutory or common law;
- b. Any claim, including, but not limited to, contribution claims, motions for joinder and third-party claims, related to any and all lawsuits involving third parties;
- c. Any direct or indirect claim for reimbursement from any other State fund; and
- d. Claims based on DEQ's oversight of the Work under the WQA, the SWMA, or any other provision of law.

XXIV. RESERVATION OF RIGHTS BY EXXONMOBIL

100. Except as specifically provided in this AOC, ExxonMobil retains all rights and defenses it now has or may have as to such other matters. ExxonMobil expressly reserves all rights and defenses against the State with respect to:

- a. Liability for damages for injury to, destruction of, or loss of natural resources and for the costs of assessing and litigating any claims for natural resource damages. As provided in Section XXII, this AOC does not address or affect claims or liability for natural resource damages.

XXV. OTHER CLAIMS

101. Except as expressly provided in Section XXI (Covenant Not to Sue by DEQ/Release), nothing in this AOC constitutes a satisfaction of or release from any claim or cause of action against any other person not a Party to this AOC, for any liability such person may have under the WQA, the SWMA, other statutes, or common law.

XXVI. INDEMNIFICATION

102. By issuance of this AOC, DEQ assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of ExxonMobil.

103. ExxonMobil shall indemnify, save and hold harmless the State, its departments, agencies, instrumentalities, officials, agents, employees and representatives (collectively “State of Montana Indemnites”) from any and all third-party claims or causes of action arising in whole or in part from, or on account of, negligent or other wrongful acts or omissions of ExxonMobil, its officers, directors, employees, agents, Contractors, or subcontractors, or any persons acting on its behalf or under its control, in carrying out the Work pursuant to this AOC. This indemnification shall specifically include any joinder of the State to an action between ExxonMobil and any third party. The State shall require its contractors and subcontractors to maintain general liability and vehicle liability insurance with the contractor’s or subcontractor’s insurance as primary insurance with respect to the State of Montana Indemnities. The State shall not waive, or intentionally take or commit any action that has the effect of waiving or materially diminishing, any affirmative defense to any claim or lawsuit for which the State seeks indemnification from ExxonMobil.

104. In addition, ExxonMobil agrees to pay the State all reasonable costs incurred by the State, including but not limited to reasonable attorneys’ fees and other reasonable expenses of litigation and settlement, arising from or on account of claims made against the State based on negligent or other wrongful acts or omissions of ExxonMobil, its officers, directors, employees, agents, Contractors, subcontractors and any persons acting on their behalf or under its control, in carrying out the Work pursuant to this AOC.

105. The State shall not be held out as a party to any contract entered into by or on behalf of ExxonMobil in carrying out activities pursuant to this AOC. Neither ExxonMobil nor any of its officers, directors, employees, agents, Contractors, subcontractors and any persons acting on their behalf or under its control shall be considered an agent of the State.

106. The State shall give ExxonMobil notice consistent with Section VII (Notices) of any claim for which the State plans to seek indemnification within 45 Days of the State's receipt of the claim. ExxonMobil shall notify the State of its determination whether it is required to and will defend and indemnify the State within 30 days of its receipt of notice. In the event that ExxonMobil is required to indemnify the State pursuant to Paragraph 103, ExxonMobil has the primary authority to resolve and/or defend against any such claim.

107. ExxonMobil waives all claims against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between ExxonMobil and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, ExxonMobil shall indemnify and hold harmless the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between ExxonMobil and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. MODIFICATIONS

108. The DEQ project coordinator, or his or her designee, may make modifications to any Deliverable or Schedule in writing. If DEQ Project Coordinator unilaterally modifies a Deliverable or Schedule, then such modification shall be noted by ExxonMobil in a cover letter to the document. Such cover letter will become part of the Deliverable or Schedule as an attachment to the document. Any other requirements of this AOC may be modified in writing by mutual agreement of the Parties. For purposes of this paragraph, written notice shall include notice consistent with Section VII (Notices). After complying with the requirements of this Section XXVII (Modifications), ExxonMobil shall have the right to invoke the dispute resolution provisions of Section XVII if it disagrees with the DEQ project coordinator's modifications and ExxonMobil's requirement to pay Future Costs in regards to this Paragraph 108 shall be tolled pending conclusion of the dispute resolution process.

109. If ExxonMobil seeks permission to deviate from any DEQ-Approved Deliverable or Schedule, ExxonMobil's project coordinator shall submit a written request to DEQ for approval outlining the proposed modification and its basis. ExxonMobil may not proceed with the requested deviation until receiving written approval from the DEQ project coordinator. For purposes of this paragraph, written approval includes an email to be followed by a formal letter, provided that DEQ's failure to send a formal letter does not revoke the approval.

110. No informal advice, guidance, suggestion, or comment by the DEQ project coordinator or other DEQ representatives regarding a Deliverable, Schedule, or any other writing submitted by ExxonMobil shall relieve ExxonMobil of its obligation to obtain any formal approval required by this AOC, or to comply with all requirements of this AOC, unless it is formally modified.

XXVIII. ADDITIONAL WORK

111. If DEQ determines that work related to the Discharge at the Site and not addressed in this AOC or SOW is reasonably necessary to protect public health, welfare, or safety, or the environment, DEQ will notify ExxonMobil of that determination. Unless otherwise stated by DEQ, within 60 Days of receipt of notice consistent with Section VII (Notices) from DEQ that additional response actions or work are reasonably necessary to protect public health, welfare, or safety, or the environment,

ExxonMobil shall submit a Work Plan for the additional work to DEQ for Approval, subject to the provisions of Section IX (Work to Be Performed). The Work Plan shall conform to the applicable requirements of Section IX (Work to Be Performed) of this AOC. Upon DEQ's approval of the Work Plan pursuant to Section IX (Work to Be Performed), the Work Plan shall become incorporated into this AOC. ExxonMobil shall implement the Work Plan for additional work in accordance with the provisions and Schedule contained therein. ExxonMobil shall have the right to invoke the dispute resolution process in Section XVII (Dispute Resolution) if ExxonMobil disagrees with the State's determination that additional work is necessary. This section does not alter or diminish the DEQ project coordinator's authority to make modifications to any Deliverable or Schedule pursuant to Section XXVII (Modifications) subject to the provisions of Section XVII (Dispute Resolution).

XXVIX. NOTICE OF COMPLETION OF WORK

112. DEQ, upon submission by ExxonMobil annually of satisfactory documentation with respect to River Division A, River Division B, or River Division C, as reflected in SCAT Area Transition Reports (each a "River Division"), or contaminated medium addressed pursuant to the terms and conditions of this AOC, showing that ExxonMobil has complied with the requirements of this AOC with respect to a River Division or contaminated medium and that such River Division or contaminated medium does not pose a risk to the public health, welfare or safety, or the environment, shall issue a letter within 45 Days confirming that ExxonMobil has completed the requirements of this AOC with respect to that River Division or contaminated medium. If DEQ approves the completion of a River Division or contaminated medium, ExxonMobil shall not be liable for any additional response actions related to the Discharge or Work at the completed River Division or contaminated medium, except, if, subsequent to the River Division or contaminated medium completion, conditions at the River Division, previously unknown to DEQ, are discovered, or new information is received by DEQ that indicates that the Work is not adequate to protect the public health, welfare or safety, or the environment. In such case ExxonMobil shall perform the Additional Work pursuant to Section XXVIII.

113. When DEQ determines that all Work has been fully performed in accordance with this AOC, with the exception of any continuing obligations required by this AOC, including payment of Future Costs, and record retention under Section XII, DEQ will provide written notice consistent with Section VII (Notices) to ExxonMobil.

114. If DEQ determines that any such Work has not been completed in accordance with this AOC, DEQ will notify ExxonMobil, provide a list of the deficiencies, and require that ExxonMobil correct such deficiencies within a reasonably defined period of time. Subject to the provisions of Section XVII (Dispute Resolution), failure by ExxonMobil to correct the deficiencies within the defined period of time shall be a violation of this AOC, subject to stipulated penalties. ExxonMobil shall have the right to invoke the dispute resolution process in Section XVII (Dispute Resolution) if ExxonMobil disagrees with DEQ's determination.

XXX. INTEGRATION/APPENDICES

115. This AOC and Attachment A, and any Deliverables that will be developed pursuant to this AOC and become incorporated into, and enforceable under, this AOC constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied

in this AOC. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this AOC.

XXXI. TERMINATION AND SATISFACTION

116. This AOC shall terminate when ExxonMobil certifies that all activities required under this AOC have been performed (the “Certification”), and DEQ has Approved the Certification. DEQ shall approve or disapprove the Certification within 6 months of ExxonMobil’s submittal of the Certification. Sections I (Jurisdiction and General Provisions), XII (Record Retention), XVI (Reimbursement of Costs), XXI (Covenant Not to Sue by DEQ/Release), XXII (Reservation of Rights by DEQ), XXIII (Covenant Not to Sue by ExxonMobil/Release), XXIV Reservation of Rights by ExxonMobil, XXV (Other Claims), XXVI (Indemnification), XXXI (Termination and Satisfaction), and XXXII (Authenticity of Data) shall survive termination of this AOC. If DEQ approves the Certification, ExxonMobil shall not be liable for any additional response actions related to the Discharge or Work at the Site, except, if, subsequent to the Certification, conditions at the Site, previously unknown to DEQ, are discovered, or new information is received by DEQ that indicates that the Work is not adequate to protect the public health, welfare or safety, or the environment.

XXXII. AUTHENTICITY OF DATA

117. Except as provided herein, ExxonMobil hereby stipulates to the authenticity of any Deliverables prepared by and submitted to DEQ by ExxonMobil or its Contractors pursuant to this AOC in any judicial or administrative proceedings brought by DEQ or the State and arising out of or related to the subject matter of this AOC.

XXXIII. EFFECTIVE DATE

118. This AOC shall become effective after the AOC is signed by DEQ following the notice and public comment period referenced in Section XXXIV.

XXXIV. NOTICE AND PUBLIC COMMENT

119. After signature by ExxonMobil, but before final approval and signature by DEQ, DEQ shall make this AOC available for public comment for 30 days.

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120. After completion of the notice and comment period described in Paragraph 119, DEQ may withdraw or withhold consent of this AOC or may request changes to the AOC based on the comments received. If DEQ requests changes, ExxonMobil may elect to withdraw its consent. Otherwise, ExxonMobil consents to DEQ approval and the binding effectiveness of this AOC without further notice.

IT IS SO AGREED:

STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

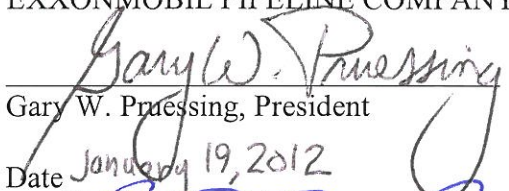
Richard H. Opper, Director

Date _____

ITS ATTORNEY John F. North

Date _____

EXXONMOBIL PIPELINE COMPANY



Gary W. Praessing, President

Date January 19, 2012



ITS ATTORNEY James R. Stevens, Jr.

Date Jan. 19, 2012

ATTACHMENT A to Administrative Order on Consent, Docket No. WQA-12-08

Scope of Work for the July 2011 Silvertip Pipeline Crude Oil Discharge to the Yellowstone River

1. ExxonMobil shall comply with EPA Region VIII, Administrative Order, *IN THE MATTER OF ExxonMobil Silvertip Pipeline Spill*, Docket # CWA-08-2011-0020 (Jul. 7, 2011) (EPA Order). If the EPA Order is modified, ExxonMobil shall comply with the EPA Order as modified.
2. ExxonMobil has complied and as appropriate will continue to comply with the provisions of all work plans and associated amendments, submitted to and approved by EPA, with consultation and concurrence of DEQ, under the terms of the EPA Order. These work plans and reports include, but are not limited to, the final approved versions of:
 - *Source Release Area Remediation Plan: Silvertip Pipeline Incident, Laurel, Montana* (Final);
 - *Oil Containment and Recovery Plan: Silvertip Oil Spill, Laurel, Montana* (Final);
 - *Downstream Affected Areas Response Plan Silvertip Oil Spill, Laurel, Montana* (Final);
 - *Irrigation and Drinking Water Sampling Plan Silvertip Oil Spill, Laurel, Montana* (Final);
 - *Comprehensive Sampling and Analysis Plan for Silvertip Pipeline Incident Action Plan, Laurel, Montana* (Final);
 - *Quality Assurance Project Plan for Comprehensive Sampling and Analysis Plan: Silvertip Pipeline Incident Action Plan, Laurel Montana* (Final);
 - *Waste Disposal Plan: Disposal Plan for Silvertip Pipeline Incident* (Final);
 - *Silvertip Pipeline Incident Laurel Montana Wildlife Recovery Plan for Yellowstone River* (Final);
 - *ExxonMobil Pipeline Company Framework Document for the Reclamation of Disturbed Vegetation: Silvertip Pipeline Incident, Laurel, Montana* (Final);
 - *Summary of Assessment and Oil Removal Activities* (Final); and
 - Each individual *SCAT Area Transition Report* (Final).
3. ExxonMobil shall comply with State of Montana requirements as set forth in the AOC, this Attachment and all DEQ-Approved Work Plans at all places within the Site. In some cases, these requirements may be in addition to and/or more stringent and/or protective than those requirements set forth in the EPA Order. DEQ reserves the right to require that ExxonMobil conduct investigation, sampling, analysis, monitoring, cleanup, and other Work associated with the Discharge at the Site under any applicable state or federal law.
4. ExxonMobil shall continue to address Work and cleanup requirements at the Site, under both State of Montana requirements and under the EPA Order, until cleanup in all segment areas between the location of the Discharge at the Site and all downstream areas impacted by the Discharge within the Site are completed

to State of Montana cleanup requirements, this AOC and DEQ-Approved Work Plans and/or Deliverables. This Work includes those specific areas that have “passed” under the EPA Order but are not resolved due to DEQ exceptions signed off by the response Unified Command.

5. DEQ is concerned that oiling, sheens, and other impacts may continue to emerge from oil contamination left in place, unidentified oil contamination, or other unidentified impacts from the Discharge. DEQ may require ExxonMobil to address emerging oiling or sheen concerns that DEQ determines are related to the Discharge at the Site as these issues arise at the Site consistent with the provisions of this SOW and/or Section XXVIII (Additional Work) of the AOC.

6. DEQ recognizes that, in some areas and circumstances, it may be necessary to leave some oiled soil, vegetation, or debris in place. In some cases, oil may be left in place because of health and safety concerns to cleanup workers (for example, it may be dangerous for cleanup workers to attempt to recover oiled debris in and under large debris fields or piles). In other cases, oil may be left in place because the cleanup process would “do more harm than good” (for example, more long-term damage might be posed to the environment by constructing roads, spreading weeds, causing erosion, and damaging native plant communities or damaging historical or cultural resources to remove oil versus leaving the oil in place). In such circumstances, and on a case-by-case basis, DEQ may approve the use of monitored natural attenuation (“MNA”) at the Site. If MNA is proposed at the Site, DEQ will require submission of additional location-specific MNA Work Plans.

7. DEQ recognizes that, in many areas, oil stain and non-transferable oil coat was left in place on vegetation and debris because the Cleanup Treatment Recommendations for these areas under the EPA Order was “No Further Treatment.” In each of the divisions A, B, and C, ExxonMobil must monitor 15 locations (for a total of 45 monitoring locations) where oil coat and stain were left to naturally attenuate. ExxonMobil submitted a Work Plan for this effort to DEQ dated October 12, 2011 and entitled *Natural Attenuation Monitoring Plan Submittal, Silvertip Pipeline Incident Project, Yellowstone River, Laurel, Yellowstone County, Montana*. DEQ has not yet Approved this Work Plan. The final DEQ-Approved version of this Work Plan will be incorporated into this AOC. The goal of this monitoring is to document and confirm the degradation of visible oil through time. Monitoring of these areas must consist of photo-documentation and a written description of chosen locations in November, 2011, June, 2012 and October, 2012. If visual signs of oil persist in any of the selected areas in October, 2012, ExxonMobil shall perform additional monitoring. If visual signs of oil persist in any of the selected areas in October, 2013, DEQ will evaluate if additional monitoring is warranted. ExxonMobil may also request a reduction of monitoring locations and frequency. In all cases, monitoring will be considered complete by October, 2016.

8. DEQ is concerned that crude oil associated with the Discharge at the Site may have deposited and become entrained with sediments in the river bed, stream banks, associated side channels, backwater areas, wetlands, and in and around public water supply (“PWS”) intakes. In order to address these potential concerns, ExxonMobil shall perform the following Work:

- a. Conduct a sediment sampling and co-located water sampling program at PWS intake structures and sedimentation or settling ponds or basins at the following locations: Laurel, Billings, Lockwood, Hysham, Colstrip, Forsyth, Miles City, Glendive, and the Montana Dakota Utilities facility near Sidney. ExxonMobil at its option may submit to DEQ a background study work plan for any specific location. Samples shall be analyzed for Extractable Petroleum Hydrocarbon (“EPH”) Screen and Volatile Petroleum Hydrocarbons (“VPH”). If the EPH Screen produces a Total Extractable Hydrocarbon (“TEH”) value greater than 200 milligrams per kilogram (mg/kg), then the sample shall be further analyzed for EPH Fractions and for polynuclear aromatic

hydrocarbons (“PAHs”) via Method 8270. If DEQ determines based on a technical review of all relevant Site information that detections are present related to the Discharge, further sampling may be required.

In and around the Site, there may be sources of contamination that are unrelated to the Discharge. If ExxonMobil identifies potential sources of contamination that may be unrelated to the Discharge, ExxonMobil shall immediately inform DEQ. If DEQ agrees with ExxonMobil that contamination in a particular area is not related to the Discharge, then DEQ will not require further action from ExxonMobil to address that particular contamination under this Administrative Order on Consent. Additionally, if DEQ determines that ExxonMobil has adequately completed the characterization in a particular area and all detections related to the Discharge are below DEQ-approved screening levels or do not present a potential risk, then DEQ shall notify ExxonMobil of this finding in writing and no further action is required. Based on the results of the initial round of samples, DEQ reserves the right to require Additional Work to address impacts which may be attributable to the Discharge at the Site to PWS systems.

DEQ required that ExxonMobil prepare and submit a Work Plan and Schedule for a PWS Sediment and Co-located Water Sampling Program for DEQ’s review and approval. In response to this required Work, ExxonMobil submitted the *Public Water Supply Sampling Plan: Silvertip Pipeline Incident; Laurel, MT* Work Plan dated September 9, 2011 to DEQ. DEQ sent comments on this Work Plan to ExxonMobil on September 22, 2011. This Work Plan has not yet been Approved by DEQ. Once Approved by DEQ, this Work Plan will be incorporated into this AOC. ExxonMobil completed surface water and sediment at the 8 PWS locations specified in DEQ’s 8/17/11 letter in late September and then sampled the Glendive PWS location on 10/24/11 based on DEQ’s comments provided on the Work Plan prepared for this Work.

b. ExxonMobil conducted an initial sediment investigation under the August 8, 2011 *Downstream Impacted Areas Soil and Sediment Sampling Plan, Silvertip Pipeline Incident, Laurel, Montana* (Final). The Downstream Impacted Areas Soil and Sediment Data Summary Report was submitted to EPA and DEQ on November 10, 2011. DEQ presented additional sediment sampling requirements to ExxonMobil in a letter dated October 19, 2011. Sampling was conducted during October and November, 2011 in response to this request. DEQ reserves the right to require ExxonMobil to conduct additional sediment sampling and/or cleanup, particularly if visual or other evidence of crude oil related to the Discharge is apparent in an area.

ExxonMobil shall prepare and submit a Work Plan and Schedule for any required Sediment Investigation for DEQ’s review and approval.

9. ExxonMobil shall conduct a groundwater investigation in areas within the Site. ExxonMobil shall focus on “worst case” areas at the Site, based upon data gathered by the Shoreline Cleanup Assessment Technique (“SCAT”) team and process undertaken pursuant to the EPA Order. As an initial assessment of groundwater contamination, ExxonMobil shall install monitoring wells or piezometers in DEQ-Approved areas along the River banks. Preference shall be given to areas with residential wells nearby. The wells shall be properly installed and developed in accordance with the Montana Board of Water Well Contractors rules, and surveyed for location and elevation by a Montana-professional licensed surveyor.

Prior to sampling, each well shall be measured for depth-to-water and then properly purged. ExxonMobil shall sample all monitoring wells on a quarterly basis for EPH Screen and VPH. If the EPH screen produces a TEH value greater than 1,000 micrograms per liter (ug/L), then the sample shall be further analyzed for EPH Fractions and for PAHs via Method 8270. Groundwater elevations shall be measured in each well on a quarterly basis. In addition, quarterly samples shall be scheduled for collection during the maximum high and low groundwater level periods. If, after 1 year of sampling, DEQ determines that the Site has been adequately characterized and no detections are present related to the Discharge above relevant criteria, no further sampling is required at the specific well and the well shall be plugged and abandoned in compliance with Montana law.

If free-product petroleum or dissolved phase petroleum that DEQ determines based on a technical review of all relevant data may be attributable to the Discharge from the Site is found in any well, DEQ may require that ExxonMobil install an adequate number of monitoring wells or piezometers in DEQ-Approved locations to determine the extent of impact and direction of groundwater flow at the Site. No further well placement will be required if constituents of concern in the new DEQ approved well locations are equal to or less than the concentrations from the initial well.

In and around the Site, there may be sources of contamination that are unrelated to the Discharge. If ExxonMobil identifies potential sources of contamination that may be unrelated to the Discharge, ExxonMobil shall immediately inform DEQ. If DEQ agrees with ExxonMobil that contamination in a particular area is not related to the Discharge, then DEQ will not require further action from ExxonMobil to address that particular contamination under this Administrative Order on Consent. Additionally, if DEQ determines that ExxonMobil has adequately completed the characterization in a particular area and all detections related to the Discharge are below DEQ-approved screening levels or do not present a potential risk, then DEQ shall notify ExxonMobil of this finding in writing and no further action is required.

Results of this initial sampling shall determine the need for additional sampling and/or additional Work. If groundwater contamination that may be attributable to the Discharge from the Site is detected, DEQ may require additional sampling of residential and irrigation wells in the area and/or other Work. If the area of concern has been adequately characterized and no detections are present related to the Discharge above applicable criteria, ExxonMobil may request that no further action be required with respect to groundwater for that area, pursuant to Section XXIX (Notice of Completion) of the AOC.

In response to this required Work, ExxonMobil submitted the *Groundwater Assessment Plan: Silvertip Pipeline Incident; Laurel Montana* Work Plan dated September 30, 2011 to DEQ. DEQ sent comments on this Work Plan to ExxonMobil on October 21, 2011. This Work Plan has not yet been Approved by DEQ. Once Approved by DEQ, this Work Plan will be incorporated into this AOC.

10. Some of the Work, such as accessing the flood plain to install monitoring wells, may require permits or approval from the U.S. Army Corps of Engineers, the Yellowstone County Conservation District, DEQ, and/or other regulatory agencies. Subject to Section X of the AOC, it is ExxonMobil's responsibility to obtain all necessary permits and comply with all applicable or relevant local, state or federal environmental requirements, criteria, or limitations.

11. Areas disturbed by investigation and cleanup activities shall be protected from weed infestation and revegetated as specified in the DEQ-Approved *Framework Document for the Reclamation of Disturbed Vegetation*. ExxonMobil shall collaborate with the Yellowstone County Weed Board and the affected landowner to ensure proper weed control and revegetation. Revegetation may be a permit requirement.

ExxonMobil shall exercise best efforts to address or eliminate the spread of noxious weeds in disturbed and/or revegetated areas.

12. ExxonMobil shall initially compare sampling results for crude oil constituents to the following levels, as applicable. DEQ will consider prevailing baseline and/or upstream conditions and/or point source, non-point source and other releases that DEQ determines are not associated with the Discharge in evaluating exceedances of the screening or cleanup levels:

- a. Surface water samples: Circular DEQ-7 Montana Numeric Water Quality Standards (August 2010) and applicable provisions of Administrative Rules of Montana, Chapter 17, Subchapter 30, Part 600, *et seq.* Surface water sample results for EPH and VPH fractions may be preliminarily compared to DEQ's Tier 1 Risk-Based Screening Levels (RBSLs) set forth in Table 3 of DEQ's Risk-Based Corrective Action guide (September 2009), with the recognition that these RBSLs were calculated for groundwater and the protection of human health and may not be protective of ecological receptors. Surface water results may need to be further evaluated from an ecological risk perspective.
- b. Groundwater Samples: Circular DEQ-7 Montana Numeric Water Quality Standards (August 2010), and Tier 1 Risk-Based Screening Levels (RSBLs) identified in DEQ's Risk-Based Corrective Action (RBCA) guidance document (September 2009).
- c. Soil samples: Tier 1 RBSLs identified in DEQ's RBCA guidance document (September 2009) (use the "residential, less than 10 feet to groundwater" scenario for the initial comparison).
- d. Sediment samples: U.S. Environmental Protection Agency Region 3 Biological Technical Assistance Group Freshwater Sediment Screening Benchmarks (August 2006). If a compound does not have a USEPA Region 3 BTAG Freshwater Sediment Screening Benchmark, other screening levels will be considered, including National Oceanic and Atmospheric Administration (NOAA) Screening Quick Reference Tables (SQuiRT: http://response.restoration.noaa.gov/book_shelf/122_NEW-SQuiRTs.pdf). It may also be appropriate to preliminarily compare sediment results for EPH and VPH fractions to the surface soil RBSLs, with the recognition that these RBSLs were calculated for surface soil and the protection of human health and may not be protective of ecological receptors. Sediment results may need to be further evaluated from an ecological risk perspective.

13. ExxonMobil shall not calculate site-specific screening or cleanup levels for State waters when a Circular DEQ-7 Numeric Water Quality Standard exists for a particular constituent related to the Discharge. However, ExxonMobil may on an area or location-specific basis, develop risk assessment work plan(s) for DEQ approval based on established EPA protocols and methodology inclusive of fate and transport components. Before drafting any risk assessment work plans, ExxonMobil may consult the following DEQ information regarding risk assessment:

<http://deq.mt.gov/StateSuperfund/FrequentlyAskedQuestions.mcp#5>. ExxonMobil shall develop a work plan for a site-specific risk assessment and/or criteria appropriate for the risk scenario(s) evaluated, for DEQ work plan approval.

Following DEQ approval and ExxonMobil implementation of a given risk assessment work plan, DEQ will review the site-specific risk assessment and any calculated site-specific screening or cleanup levels that ExxonMobil has derived. DEQ will either provide comments to ExxonMobil or Approve the risk assessment and any site-specific cleanup or screening levels.

14. ExxonMobil shall provide DEQ with final reports to document and analyze all sample results and the effectiveness of the completed Work. Deliverables to DEQ shall contain the following, as appropriate (this is not an exhaustive list):

- A summary description of the Discharge on or about July 1, 2011;
- Initial work and/or response actions conducted at the Site;
- A discussion of any Work conducted at the Site;
- Tables, graphs, etc. depicting all sampling results;
- All analytical results, laboratory data sheets, laboratory checklists, and chain-of-custody sheets;
- Copies of field log books and/or field log forms;
- A map or maps of the Site. At least one map shall show the locations of any potential receptors. The locations of all samples collected shall be indicated on a map. If excavation or other cleanup activities have occurred, the boundaries of the excavation or other cleanup activity shall be indicated on a map, along with the location of confirmation samples;
- A discussion of data quality, including: holding times and temperatures, sample preservation, any laboratory data quality issues, results of blanks and duplicates, etc. A copy of the data validation report shall be attached along with the laboratory data package;
- A discussion of any deviations from the Work Plan(s), including why the deviations occurred and corrective measures taken;
- Groundwater monitoring reports, which shall include a potentiometric surface map and a discussion of groundwater flow directions, gradient, and other pertinent information;
- Any recommendations for future Work and/or other response actions at the Site.

15. Work Plans shall contain sufficient detail for DEQ to determine that the Work will be conducted according to the DEQ's requirements and all applicable or relevant state or federal environmental statutes, requirements, criteria, or limitations. The Work Plans shall reference all relevant standard operating procedures (SOPs) (and include copies of SOPs in an appendix) and/or a DEQ-Approved Quality Assurance Project Plan. Three hard-copies and one modifiable electronic copy on compact disk of Work Plans and

Schedules shall be submitted to:

Laura Alvey
Remediation Division
Department of Environmental Quality
P.O. Box 200901 Helena, MT 59620

16. ExxonMobil shall continue to maintain the secure data-sharing website for use by the State of Montana, all impacted city and counties officials, U.S. Environmental Protection Agency, and other federal agencies.

17. ExxonMobil shall continue to upload all environmental sampling data, including sampling coordinates, and associated metadata into USEPA's SCRIBE database/data-sharing application. In the event the SCRIBE database becomes inoperative, inaccessible, or in any other way unusable for storage and retrieval of sample information, ExxonMobil shall transfer and maintain all sample information in another database /data-sharing application approved by DEQ.

18. ExxonMobil shall transfer all geospatial data collected as of January 1, 2012 to DEQ. This includes all ESRI-compatible vector and raster datasets, including metadata such as lookup tables, data dictionaries, and sources, as well, any geospatial data in AutoCAD, excel or access format. This also includes all geometrically corrected overflight aerial imagery (orthoimagery), and all overflight photos with GPS coordinates. In addition, ExxonMobil shall continue to maintain and update the geospatial database and interactive web-based mapping application with all the capabilities used to monitor the investigation, cleanup, and other Site information. Because this application will provide critical information to assist DEQ and other agencies to evaluate and address emerging impacts into the future, ExxonMobil shall maintain and update this application until all impacts, and potential emerging impacts from the Discharge at the Site have been addressed. In addition, all updates to the application shall be accompanied by a transfer of the geospatial data to DEQ. Finally, ExxonMobil shall transfer the geospatial database and associated applications, or an equivalent database and applications with all its capabilities, to DEQ at the end of the Work or as requested by DEQ.

19. ExxonMobil shall update environmental sample locations, photograph locations, and other data on the geospatial database and interactive mapping application as this information becomes available. ExxonMobil shall provide DEQ all photographs collected by ExxonMobil personnel and its contractors related to the Work at the Site, and all associated metadata, including photograph locations (coordinates), and other data. The photographs shall also be maintained in an electronic storage and retrieval system that shall be linked to the geo-spatial database and its interactive mapping applications. The photograph storage and retrieval system, or an equivalent system, shall be transferred to DEQ at the end of the Work or as requested by DEQ.