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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

EXXON MOBIL CORPORATION,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
MONTANA RAIL LINK, INC.,
STRATEGIC COLLABORATIVE
INVESTMENTS, INC., JUDY

No. CV-25-151-BLG-TJC

**EXXON MOBIL
CORPORATION'S
AMENDED COMPLAINT**

KIRKLAND, PATRICIA
SANFORD, KAREN BOYLAN,
and ROBERT POPELKA, as
Assignees of the Richard H.
Popelka Trust, BAKER
COMMODITIES, INC.,
MONTANA DEPARTMENT OF
TRANSPORTATION, ASI
INDUSTRIAL, BOB AND SUSAN
YOUNG, AUTO MAGIC, R&S
ENTERPRISES, JOHN DOE, as
Trustee of the Horace Wyman
Testamentary Trust, JANE DOE
as Trustee of the Kathryn Wyman
Trust, JOHN DOE 2, as Trustee of
the Wyman Properties Trust,
NBS PROPERTIES, LLC, PAR
PACIFIC HOLDINGS, INC.,
PHILLIPS 66 COMPANY,
PHILLIPS 66 PIPELINE LLC,
CHS, INC., YELLOWSTONE
PIPELINE COMPANY, and
MONTANA REFINING
COMPANY

Defendants.

Plaintiff Exxon Mobil Corporation (“Plaintiff” or “EM”) files this Amended Complaint against Defendants BNSF Railway Company, Montana Rail Link, Inc., Strategic Collaborative Investments, Inc., Judy

Kirkland, Patricia Sanford, Karen Boylan, and Robert Popelka, as Assignees of the Richard H. Popelka Trust, Baker Commodities, Inc., Montana Department of Transportation, ASI Industrial, Bob and Susan Young, Auto Magic, R&S Enterprises, John Doe, as Trustee of the Horace Wyman Testamentary Trust, Jane Doe, as Trustee of the Kathryn Wyman Trust, John Doe 2, as Trustee of the Wyman Properties Trust, NBS Properties LLC, Par Pacific Holdings, Inc., Phillips 66 Company, Phillips 66 Pipeline LLC, CHS, Inc., Yellowstone Pipeline Company, and Montana Refining Company (collectively “Defendants”) and in support shows as follows:

I. INTRODUCTION

1. By letter dated June 8, 2011, the Montana Department of Environmental Quality (“MDEQ”) notified ExxonMobil Corporation (“EMC”) and certain¹ of the named Defendants, and/or their

¹ The June 8, 2011, MDEQ Notice Letter was sent to: ExxonMobil Corporation, ASI Industrial (also known as Agri-Systems), BNSF Railway Company (formerly Burlington Northern & Santa Fe Railway Company), Phillips 66 Pipeline LLC (formerly ConocoPhillips Pipeline Company), CHS Inc., Montana Department of Transportation (MDT), Montana Rail Link, Inc., Bob and Susan Young, James and Karen Bageman, and Yellowstone Pipe Line Company.

predecessors, of their potential liability for the investigation and cleanup of the Yale Oil Corporation of South Dakota Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”) Facility in Billings, Montana (the “Site”).² MDEQ alleged that each party was a potentially liable person (“PLP”) under CECRA for the costs associated with investigation and remediation of the alleged release of hazardous or deleterious substances at the Site.

2. On August 12, 2011, EM agreed to lead the investigation and remediation of the Site and was designated as lead PLP pursuant to CECRA § 75-10-746, which obligates EM to lead the remedial actions at the Site required by MDEQ. Prior to and following this designation, EM has cooperated with MDEQ and led the investigation and interim remedial measures at the Site, expending considerable time and money, more than \$10 million, on these efforts with minimal contribution from only certain of the Defendants. Federal and Montana environmental laws allow EM to recover costs and obtain contribution from Defendants, pursuant to the following:

² See **Exhibit 1**, June 8, 2011, MDEQ Notice to ExxonMobil Corporation, for example.

- A. A civil action for cost recovery brought pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, for necessary costs incurred consistent with the national contingency plan by EM in performing response actions related to the alleged release or threatened release of hazardous substances at the Site;
- B. A civil action for contribution brought pursuant to CECRA §§ 75-10-715 and 75-10-724 for remedial action costs incurred by EM in performing remedial actions related to the release or threatened release of hazardous and/or deleterious substances at the Site; and
- C. An action for declaratory relief pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and under CECRA § 75-10-724.

II. PARTIES

3. **Plaintiff EM** is a New Jersey corporation with its primary offices at 22777 Springwoods Village Parkway in Spring, Texas. EM is

the successor to Carter Oil Company (“Carter Oil”), a former owner (1944–1954) and operator (1944–1949) of a refinery on the Site.

4. **Defendant BNSF Railway Company** (“BNSF”), formerly Burlington Northern & Santa Fe Railway Company, is legally responsible for the Site-related liabilities arising from its ownership of, operations on, and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site. BNSF is a Delaware corporation with its principal place of business at 2650 Lou Menk Drive, in Fort Worth, Texas 76131 and may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. BNSF is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

5. **Defendant Montana Rail Link, Inc.** (“MRL”) is legally responsible for the Site-related liabilities arising from its previous ownership of, operations on, and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site. MRL is a Montana corporation with its principal place of business at 101 International Drive, in Missoula,

Montana 59808 and may be served through its registered agent Corporation Service Company, 26 West 6th Avenue, Helena, MT 59624. MRL is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

6. Defendant Strategic Collaborative Investments, Inc. (“SCI”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on a portion of the Site. SCI’s principal place of business is located at 724 First Avenue North, Billings, Montana 59101 and may be served through its registered agent Crist, Krogh, Alke & Nord, PLLC., 2708 First Ave North, Suite 300, Billings, MT 59101. SCI is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

7. Defendants Judy Kirkland, Patricia Sanford, Karen Boylan, and Robert Popelka, as Assignees of the Richard H. Popelka Trust (“Assignees of the Popelka Trust”), upon information and belief, are legally responsible for the Site-related liabilities arising from their current ownership of and past ownership and operations on a portion of the Site at the time of treatment and/or disposal of hazardous and/or deleterious substances. The last known addresses of the

Assignees of the Popelka Trust are 600 Minnesota Ave, Billings, MT 59101 and 1941 Elaine St., Billings, MT 59105. Each Assignee of the Popelka Trust is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16). The Assignees of the Popelka Trust lease the property on a contract for deed to ASI.

8. **Defendant Baker Commodities, Inc.** (“Baker Commodities”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on a portion of the Site. Baker Commodities’ principal place of business is located at 4020 Bandini Blvd, Los Angeles, CA 90058 and may be served through its registered agent at that same address. Baker Commodities is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

9. **Defendant Montana Department of Transportation** (“MDT”) is legally responsible for the Site-related liabilities arising from its property ownership of, operations on, and, upon information and belief, arrangement for the disposal or treatment of hazardous or deleterious substances on a portion of the Site. MDT is a public entity

with its principal place of business at 2701 Prospect Avenue, in Helena, Montana 59620 and may be served through its Chief Counsel, Tim Reardon, P.O. Box 200507, Helena, MT 59620-0507. MDT is a “person” within the meaning of CECRA § 75-10-701(16).

10. **Defendant ASI Industrial** (“ASI”) formerly known as Agri-Systems Inc., is legally responsible for the Site-related liabilities arising from its ownership of and operations on, and, upon information and belief, arrangement for the disposal or treatment of hazardous or deleterious substances on a portion of the Site. ASI is a Montana corporation with its principal place of business at 1300 Minnesota Ave., in Billings, Montana 59101 and may be served through its registered agent Robert Hamlin, 1300 Minnesota Ave., Billings, MT 59101-0000. ASI is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

11. **Defendants Bob and Susan Young** (collectively, the “Youngs”) are legally responsible for the Site-related liabilities arising from their past Site ownership of, operations on, and, upon information and belief, the arrangement for the disposal or treatment of hazardous or deleterious substances at the time of the release of hazardous and

deleterious substances on the Site. The Youngs are individuals who reside at 1630 Cobble Creek Trail, Billings, Montana 59106-3687, and may be served at 720 First Avenue North, Billings, Montana 59101. Bob and Susan Young are each a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

12. **Defendant Auto Magic** is legally responsible for the Site-related liabilities arising from its operations on and, upon information and belief, the arrangement for the disposal or treatment of hazardous or deleterious substances on the Site. Auto Magic’s principal place of business is located at 720 First Avenue North, Billings, Montana 59101 and may be served at the same address. Auto Magic is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

13. **Defendant R&S Enterprises (“R&S”)** is legally responsible for the Site-related liabilities arising from its current ownership of, operations on, and, upon information and belief, the arrangement for the disposal or treatment of hazardous or deleterious substances on a portion of the Site. R&S is a Montana corporation with its principal place of business at 720 First Avenue North, Billings, Montana 59101 and may

be served through its registered agent Bob Young at 720 First Avenue North, Billings, Montana 59101. R&S is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

14. **Defendant John Doe, as Trustee of the Horace Wyman Testamentary Trust** (“Horace Wyman Trust”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on a portion of the Site at the time of the treatment and/or disposal of hazardous and/or deleterious substances. The last known address of the Trustee for the Horace Wyman Trust is 3028 Crib Point Drive, Las Vegas, NV 89134-7041. Horace Wyman Trust is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

15. **Defendant Jane Doe, as Trustee of the Kathryn Wyman Trust** (“Kathryn Wyman Trust”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on a portion of the Site at the time of treatment and/or disposal of hazardous and/or deleterious substances. The last known address of the Trustee for the Kathryn Wyman Trust is 3028 Crib Point Drive, Las Vegas, NV

89134-7041. Kathryn Wyman Trust is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

16. Defendant John Doe 2, as Trustee of the Wyman Properties Trust (“Wyman Properties Trust”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on a portion of the Site at the time of treatment and/or disposal of hazardous and/or deleterious substances. The last known address of the Trustee for the Wyman Properties Trust is 3028 Crib Point Drive, Las Vegas, NV 89134-7041. Wyman Properties Trust is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

17. Defendant NBS Properties LLC (“NBS”) is legally responsible for the Site-related liabilities arising from its current ownership of and its operations on a portion of the Site. NBS is a Montana corporation with its principal place of business at 600 First Ave North, Billings, MT 59101 and may be served through its registered agent Taylor Brown at that same address. NBS is a person within the

meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

18. **Defendant Par Pacific Holdings, Inc.** (“Par Pacific”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on, and, upon information and belief, the arrangement for disposal or treatment of a hazardous or deleterious substance on a portion of the Site. Par Pacific is a Delaware corporation with its principal place of business at 825 Town and Country Lane, Suite 1500, Houston, TX 77024. Par Pacific may be served through its registered agent, Corporation Trust Company, located at C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. Par Pacific is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

19. **Defendant Phillips 66 Company** (“P66 Company”) is legally responsible for the Site-related liabilities arising from its arrangement for disposal of hazardous or deleterious substances which have come to be located on the Site. P66 Company is a Texas corporation with its principal place of business at 2331 Citywest Blvd., Houston, TX 77042. P66 Company may be served through its registered agent, CSC-

Lawyers Incorporating Service Company, 26 West 6th Avenue, Helena, MT 59624. P66 Company is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

20. **Defendant Phillips 66 Pipeline LLC** (“P66 Pipeline”) is legally responsible for the Site-related liabilities arising from its ownership of, operations on, and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site. P66 Pipeline is a Texas limited liability company with its principal place of business at 2331 Citywest Blvd., Houston, TX 77042. P66 Pipeline may be served through its registered agent, CSC-Lawyers Incorporating Service Company, 211 East Seventh Street, Suite 620, Austin, Texas 78701. P66 Pipeline is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

21. **Defendant CHS, Inc.** (“CHS”) is legally responsible for the Site-related liabilities arising from its ownership of, operations on, and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site. CHS is a Montana corporation with its principal place of business at 5500 Cenex

Drive, Inver Grove Heights, MN 55077. CHS may be served through its registered agent at Crist, Krogh, Alke & Nord, PLLC., 2708 First Avenue North, Suite 300, Billings, MT 59101. CHS is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

22. Defendant Yellowstone Pipeline Company (“Yellowstone Pipeline”) is legally responsible for the Site-related liabilities arising from its ownership of, operations on, and, upon information and belief, the arrangement for the disposal or treatment of hazardous or deleterious substances on a portion of the Site. Yellowstone Pipeline is a Texas corporation with its principal place of business at 2331 Citywest Blvd., Houston, TX 77042. Yellowstone Pipeline may be served through its registered agent, Corporation Service Company, 26 West 6th Avenue, Helena, MT 59624. Yellowstone Pipeline is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

23. Defendant Montana Refining Company (“Montana Refining”) is legally responsible for the Site-related liabilities arising from its ownership of and operations on a portion of the Site. Montana

Refining was a Montana corporation. Upon information and belief, Montana Refining is a dissolved corporation. Montana Refining is a “person” within the meaning of CERCLA section 101(21), 42 U.S.C. § 9601(21), and CECRA § 75-10-701(16).

III. JURISDICTION AND VENUE

24. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States.

25. Venue is proper in this Court pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because the releases or threatened releases of hazardous and/or deleterious substances that give rise to this Amended Complaint occurred at the Site which is located within this District.

IV. GOVERNING LAW

A. Federal Law — CERCLA

26. Section 107 of CERCLA, titled “*Liability*”, 42 U.S.C. §§ 9607(a)(1)–(4), provides in pertinent part:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner or operator of a vessel or facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. . . .

27. CERCLA defines “person” to include “an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.” 42 U.S.C. § 9601(21).

28. As discussed further herein, each of the Defendants listed above is a person who falls within the class of persons described in section 107(a)(1), (2), (3), and (4) of CERCLA, 42 U.S.C. § 9607(a)(1)-(4).

B. Montana State Law — CECRA

29. CECRA § 75-10-715 provides that the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

- (a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;
- (b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

30. CECRA defines a “person” to include, among others, an individual, trust, commercial entity, corporation, state or state agency. CECRA § 75-10-701(16).

31. As discussed further herein, each of the Defendants listed above is a person who falls within the class of persons described in CECRA § 75-10-715.

32. A private right of action for contribution and declaratory judgment exists for any person who received notice under CECRA § 75-10-711 among others. Such persons “may bring a private right of action, including a claim for contribution or declaratory relief, against any other person who is liable or potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims, the court shall allocate remedial action costs among the liable persons based on the factors set out in 75-10-750.” CECRA § 75-10-724.

V. FACTUAL BACKGROUND

A. History and Ownership

33. The Site is located on the eastern end of Billings, Montana and consists of approximately 70 acres bounded by the Yellowstone River on the east, Interstate 90 on the south, industrial properties on the west, and US 87 to the north. The BNSF railroad line bisects the Site and separates it into parcels, commonly referred to as tracts, with Tracts A, B, C, and D, and the MDT Tract located north of the railroad line, and Tracts 1-A, 1-B, 2-B, and 5 to the south. The Yegen Ditch (sometimes called the Yegen Drain), also south of the railroad line, runs through portions of Tracts 1-A, 1-B, 2-B, and 5, and flows into the Yellowstone River.



34. The Site includes property owned and operated by a railroad and its rights-of-way, pipelines and their easements, a tank farm, and numerous commercial businesses. Historically, the Site was home to two small oil refineries. Upon information and belief, present-day owners include R&S Enterprises, Strategic Collaborative Investments, Inc., NBS Properties, LLC, Assignees of the Popelka Trust, Baker Commodities, Inc., BNSF, Par Pacific, CHS, Phillips 66 Pipeline LLC, Yellowstone Pipeline Company, and MDT. Present-day uses include auto sales, warehouse storage, broadcasting company offices, petroleum pipeline

operations, industrial fabrication, road material mixing and storage, and a rail line.

35. A refinery was constructed south of the railroad tracks on the Site by Montana Refining Company in or around 1921. It ceased operations in or around 1923. Another refinery north of the railroad tracks was constructed in 1929 by Yale Oil Corporation of South Dakota (“Yale Oil”). Yale Oil operated the refinery until it sold the refinery and other assets to Leader Oil Company (“Leader Oil”) in April 1944.

36. Leader Oil conveyed the refinery and other assets to Carter Oil in April 1944. Carter Oil conducted refining operations at the Site for five years until 1949.

37. After refining operations at the Site ceased, Carter Oil sold parcels of its land represented by the aforementioned tracts. Since then, a variety of businesses and industries have operated at the Site over the years, and their operations have included: paint manufacturing; storage and warehouse operations; welding and fabrication; automobile sales; waste collection; farm equipment retail and repair; gardening services; automobile detailing; tire retreading and servicing; automobile parts and equipment sales; trailer manufacturing and repair; pipeline systems and

associated structures; a national guard armory; state transportation fuel, equipment, and materials storage, including road base and sludge; slaughterhouse and meat processing; leather tanning; and construction. In addition, BNSF, and its predecessors, along with MRL, and its predecessors, have, at various times, operated a railroad and its rights-of-way from the 1860s to the present on the Site. Upon information and belief, BNSF and MRL have leased, both in the past and presently, portions of their rights-of-way to numerous and various parties.

38. In May 1986, the United States Environmental Protection Agency (“USEPA”) added the Site to the Comprehensive Environmental Response, Compensation and Liability Information System (“CERCLIS”) Superfund database (CERCLIS No. MTD980960660) on the recommendation of the Montana Department of Health and Environmental Sciences (“MDHES”), the predecessor to the MDEQ.

39. Pursuant to the provisions of CECRA, from 2000 to 2010 the MDEQ requested information regarding the ownership and use of the Site from current and previous landowners and tenants within or near the Site.

40. On June 8, 2011, EMC received a letter from the MDEQ regarding the Site, which identified EMC as a PLP for the alleged release of hazardous or deleterious substances at the Site by virtue of its succession to Carter Oil. MDEQ also identified certain of the Defendants named in this lawsuit, or a related predecessor entity, as PLPs for the alleged release of hazardous or deleterious substances at the Site.

41. On August 12, 2011, EM agreed to take the lead in the investigation of the Site and was designated as lead PLP, which is the party that leads the PLPs in conducting remedial actions required by MDEQ. Prior to and following this designation, EM has cooperated with MDEQ and led the investigation and performance of interim remedial measures at the Site, expending considerable time and money on remedial actions with minimal contribution from some, but not all, of the Defendants that were also identified by MDEQ as being PLPs.

B. Remedial Timeline

42. From 1944 to 1949, Carter Oil implemented an oil recovery system that removed 1.26 million gallons of Non-Aqueous Petroleum Liquids (“NAPL”) from the Site.

43. The remedial investigation process began in 2011 and continued through 2015, which included waste removal and disposal and an assessment of the soil, groundwater, asbestos, surface water, sitewide vapor, and Light Non-Aqueous Petroleum Liquids (“LNAPL”).

44. In 2014, asbestos and debris were removed from and around a building on the MDT tract. In addition, the top 4 inches of soil near the former building and the top 2 inches of soil near the fence line were removed.

45. From 2015 to present, multiple supplemental assessments of the soil, groundwater, surface water, sediment, building-specific vapor, LNAPL, and ecology have taken place.

46. In 2016, a vapor abatement system was installed in an on-Site building, and ongoing routine maintenance and monthly filter changes began.

47. There is ongoing annual indoor air, ambient air, sub-slab soil vapor, and groundwater sampling conducted on Site.

48. In 2020, pilot testing of LNAPL removal technologies began including vapor extraction, skimming, and bioventing. There is ongoing monthly LNAPL removal.

49. A Feasibility Study (“FS”) and Work Plan (“WP”) are underway, and EM expects the approval of both from MDEQ in 2026.

VI. STATUTORY NOTICE

50. Copies of this Amended Complaint are being provided to the Attorney General of the United States and the Administrator of USEPA, as required by section 113(l) of CERCLA, 42 U.S.C. § 9613(l).

VII. ALLEGATIONS

51. Plaintiff alleges that Defendants either own or operate the Site, owned or operated the Site at the time of the treatment or disposal of hazardous or deleterious substances, disposed of hazardous or deleterious substances, have arranged for the disposal of hazardous or deleterious substances at the Site, or have transported hazardous or deleterious substances to the Site.

A. Allegations Regarding BNSF

52. The Northern Pacific Railroad Company—now BNSF—was incorporated by an Act of Congress on July 2, 1864, the same Act granted the company a 400-foot-wide strip of land transecting the Site.

53. Defendant BNSF currently owns and operates a portion of the Site. BNSF was identified by MDEQ as a PLP and is believed to have contributed to the alleged release or threatened release of hazardous or

deleterious substances at the Site. BNSF also transported hazardous or deleterious materials to the Site.

54. BNSF owns and operates a railroad on the property and owns and controls a right-of-way (“ROW”) corridor parallel to the rail line extending 200 feet to each side of the main track. The BNSF ROW is the largest tract of property on the Site, with its 20.3 acres comprising 29% of the Site.

55. Additionally, railroad operations were, at times, indistinguishable from those of its lessees as BNSF had, and still has, a number of ROW agreements and leases with other entities at the Site from which it has enjoyed economic benefit, like rent from use of the ROW, and guaranteed first rights to haul materials produced from the refinery and access to certain necessary fuels for locomotives. BNSF was inextricably connected to refinery operations as well as being the owner of the railway and ROW.

56. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, the mainline and ROW owned by BNSF covers 74% of the total area affected by LNAPL contamination at the Site and 68% of the total area

of contaminated soil, including the contamination of coal-tar/creosote, expected to require excavation and removal. Further, BNSF accepted hazardous and deleterious substances for transport to the Site for disposal or treatment.

57. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, BNSF is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a); a person who at the time of disposal of a hazardous or deleterious substance owned and operated a facility within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b); and a person who accepted a hazardous or deleterious substance for transport to a disposal or treatment facility within the meaning of CERCLA section 107(a)(4), 42 U.S.C. § 9607(a)(4), and CECRA § 75-10-715(1)(d).

B. Allegations Regarding MRL

58. Defendant MRL was identified by MDEQ as a PLP and is believed to have contributed to the alleged release or threatened release

of hazardous or deleterious substances at the Site. MRL also transported hazardous or deleterious materials to the Site.

59. MRL owned and operated a railroad on the property and owned and controlled a ROW corridor parallel to the rail line extending 200 feet to each side of the main track.

60. Additionally, railroad operations were, at times, indistinguishable from those of its lessees as MRL had/has a number of ROW agreements and leases with other entities at the Site from which it has enjoyed economic benefit, like rent from use of the ROW, and guaranteed first rights to haul materials produced from the refinery and access to certain necessary fuels for locomotives. MRL was inextricably connected to refinery operations as well as being the owner of the railway and ROW.

61. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, MRL is a person who owned and operated a facility at the time a hazardous or deleterious substance, including coal-tar/creosote, was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b); and a person who accepts or

accepted a hazardous or deleterious substance for transport, within the meaning of CERCLA section 107(a)(4), 42 U.S.C. § 9607(a)(4), and CECRA § 75-10-715(1)(d).

C. Allegations Regarding SCI

62. SCI owns and operates a portion of the Site and is believed to be liable for the alleged release or threatened release of hazardous or deleterious substances at the Site.

63. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Farmers Union Central Exchange purchased Tract B from Carter Oil Company in 1954, which was used by Farmers Union Central Exchange as a warehouse facility. It is also believed that this portion of the Site was used as an oil, grease and tire warehouse, oil storage, and grease plant, likely supporting regional operational activities. Farmers Union Central Exchange sold Tract B to Motor Power Equipment Company in 1972.

64. SCI is the current owner of Tract B, which is the location of the former Farmers Union Central Exchange warehouse facility and the

oil, grease and tire warehouse, oil storage, and grease plant likely to support regional operational activities referenced above.

65. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, SCI is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a).

D. Allegations Regarding Assignees of the Popelka Trust

66. Assignees of the Popelka Trust are the current owners of Tract 1-A on the Site.

67. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Assignees of the Popelka Trust are persons who own or operate a facility where a hazardous or deleterious substance was disposed of, within the meaning of CECRA § 75-10-715(1)(a), and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CECRA § 75-10-715(1)(c).

E. Allegations Regarding Baker Commodities

68. Baker Commodities is the current owner of Tract 1-B on the Site, which it acquired on July 20, 2004, from a warranty deed from Richard H. Popelka, Trustee of the Richard H. Popelka Trust.

69. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Baker Commodities is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CECRA § 75-10-715(1)(a), and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CECRA § 75-10-715(1)(c).

F. Allegations Regarding MDT

70. MDT owns and operates a portion of the Site, referred to as the MDT Tract. MDT acquired the MDT Tract on or around September 13, 1935. MDT was identified by MDEQ as a PLP and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances at the Site.

71. State Highway Commission of Montana, MDT's predecessor, acquired the tract from Yellowstone County in 1935. A building on the tract was constructed near the time the refining activities at the Site ceased, and ponds or depressions were present on the tract in the early 1950s.

72. MDT leased the property to the Montana Department of Military Affairs for use as an organizational maintenance shop. In 1973 or 1974, the Department of Military Affairs removed a 1,000-gallon underground storage tank located on the MDT tract due to structural failure indicated by water intrusion.

73. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, MDT is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CECRA § 75-10-715(1)(a), and, upon information and belief, the arrangement for disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CECRA § 75-10-715(1)(c).

G. Allegations Regarding ASI

74. Upon information and belief, ASI currently owns and operates a portion of the Site. ASI was identified by MDEQ as a PLP and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances in its operations at the Site.

75. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, during the summer of 2010, ASI installed 1,500 linear feet of 6-foot buried culvert affecting the Yegen Ditch without obtaining proper permits or authority. During subsequent storm conditions, the culvert was unable to handle the volume of water in the Yegen Ditch causing the water to back up and flood the nearby area, dispersing hazardous and deleterious substances as a result.

76. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, ASI is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a). Further, upon information and belief, based on known evidence and

evidence likely to be gathered after further investigation and discovery, ASI is also a person who arranged for the disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CECRA § 75-10-715(1)(c).

H. Allegations Regarding the Youngs

77. The Youngs are the former owners of a portion of the Site. The Youngs were identified by MDEQ as PLPs and are believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances at the Site.

78. The Youngs purchased Tract A on November 6, 2007, and later conveyed the property to R&S, which is also controlled by the Youngs. The Youngs, through R&S, currently operate Auto Magic, a used automobile dealership on the property.

79. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, each of the Youngs is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-

10-715(1)(b). Further, upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, the Youngs are also a person(s) who arranged for the disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CECRA § 75-10-715(1)(c).

I. Allegations Regarding Auto Magic

80. Auto Magic currently operates an automobile dealership on the Site and is believed to be liable for the alleged release or threatened release of hazardous or deleterious substances at the Site. Auto Magic began operating on Tract A, now owned by R&S, on or around July 13, 2017.

81. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Auto Magic is a person who operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a). Operations included, upon information and belief, maintenance of automobiles and filling of gas tanks, pursuant to which there are routine minor releases of hazardous and deleterious substances.

82. Upon further information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Auto Magic is also a person who arranged for the disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CECRA § 75-10-715(1)(c).

J. Allegations Regarding R&S

83. R&S currently owns a portion of the Site and is believed to be liable for the alleged release or threatened release of hazardous or deleterious substances at the Site.

84. The Youngs conveyed Tract A to R&S, upon which Auto Magic currently operates, and where hazardous materials were identified as referenced above.

85. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, R&S is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a).

K. Allegations Regarding Horace Wyman Trust

86. The Horace Wyman Trust formerly owned and operated a portion of the Site. The Horace Wyman Trust was identified as a PLP by MDEQ and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances at the Site.

87. The Horace Wyman Trust purchased Tract C from Carter Oil in 1954 and owned and operated Tract C, individually and through various trusts, from 1954–2019 (the “Wyman Era”), when it conveyed the property to NBS. Its primary business was leasing of the property, including three buildings on Tract C, to various tenants, including Big Sky Haul-Away, Tana Industries, and Goldstar, during the Wyman Era.

88. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, the Horace Wyman Trust is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

L. Allegations Regarding Kathryn Wyman Trust

89. The Kathryn Wyman Trust formerly owned and operated a portion of the Site. The Kathryn Wyman Trust was identified as a PLP by MDEQ and is believed to have contributed to the alleged or threatened release of hazardous or deleterious substances at the Site.

90. The Kathryn Wyman Trust purchased Tract C from Carter Oil in 1954 and owned and operated Tract C, individually and through various trusts, from 1954–2019 (the “Wyman Era”), when it conveyed the property to NBS. Its primary business was leasing of the property, including three buildings on Tract C, to various tenants, including Big Sky Haul-Away, Tana Industries, and Goldstar, during the Wyman Era.

91. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, the Kathryn Wyman Trust is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

M. Allegations Regarding The Wyman Properties Trust

92. The Wyman Properties Trust formerly owned and operated a portion of the Site. The Wyman Properties Trust was identified as a PLP by MDEQ and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances at the Site.

93. The Wyman Properties Trust purchased Tract C from Carter Oil in 1954 and owned and operated Tract C, individually and through various trusts, during the Wyman Era, when it conveyed the property to NBS. Its primary business was leasing of the property, including three buildings on Tract C, to various tenants, including Big Sky Haul-Away, Tana Industries, and Goldstar, during the Wyman Era.

94. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, the Wyman Properties Trust is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where hazardous or deleterious substances, including petroleum, was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

N. Allegations Regarding NBS

95. NBS is the owner and operator of a portion of the Site and is believed to be liable for the alleged release or threatened release of hazardous or deleterious substances at the Site.

96. In 1997, NBS became a tenant of Tract C and began operating a radio station on the property where the aforementioned activities by Big Sky Haul-Away, Tana Industries, and Goldstar had taken place.

97. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, NBS is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a).

O. Allegations Regarding Par Pacific

98. Par Pacific owns and operates pipelines that transect the Site and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances in its operations at the Site.

99. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery,

Par Pacific is a person who owns and operates a pipeline at the facility where the hazardous or deleterious substance were disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a).

P. Allegations Regarding P66 Company

100. Upon information and belief, P66 Company owns and operates a refinery to the west of and upgradient of the Site and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances because its adjacent operations resulted in hazardous or deleterious releases or threatened hazardous or deleterious substances releases to the Yegen Drain, which flowed onto the Site.

101. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, P66 Company is a person who arranged for the disposal of a hazardous or deleterious substances, which contaminated the Site, within the meaning of CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), and CECRA § 75-10-715(1)(c).

Q. Allegations Regarding P66 Pipeline

102. P66 Pipeline owns and operates pipelines, manifolds, pipeline pump stations, and other related systems at the Site and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances in its operations at the Site.

103. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, P66 Pipeline is a person who owns or operates a facility where a hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a).

104. Further, upon information and belief, P66 Pipeline is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

105. Upon further information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, P66 Pipeline is also a person who arranged for the disposal

or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), and CECRA § 75-10-715(1)(c).

R. Allegations Regarding CHS

106. CHS owns and operates Tract 5, the Billings Tank Farm, at the Site since it or its predecessor acquired ownership on or around February 1954. CHS also owned and operated Tract B at the Site from August 25, 1953, to October 20, 1972. CHS is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances in its operations at the Site within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), and CECRA § 75-10-715(1)(a).

107. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, CHS is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

108. Upon further information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, CHS is also a person who arranged for the disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), and CECRA § 75-10-715(1)(c).

S. Allegations Regarding Yellowstone Pipeline

109. Yellowstone Pipeline owns and operates pipelines that transect the Site, has owned them from 1954 to present, and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances in its operations at the Site.

110. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Yellowstone Pipeline is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

111. Upon further information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Yellowstone Pipeline is also a person who arranged for the disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), and CECRA § 75-10-715(1)(c).

T. Allegations Regarding Montana Refining

112. Montana Refining owned and operated a refinery in the Railroad ROW south of the railroad tracks at the Site and is believed to have contributed to the alleged release or threatened release of hazardous or deleterious substances in its operations at the Site.

113. Upon information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Montana Refining is a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and CECRA § 75-10-715(1)(b).

114. Upon further information and belief, based on known evidence and evidence likely to be gathered after further investigation and discovery, Montana Refining is also a person who arranged for the disposal or treatment of hazardous or deleterious substances on a portion of the Site, within the meaning of CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), and CECRA § 75-10-715(1)(c).

VIII. CAUSES OF ACTION

COUNT 1 – COST RECOVERY UNDER CERCLA (ALL DEFENDANTS EXCEPT MDT)

115. The allegations in paragraphs 1 through 114 are re-alleged and incorporated herein by reference.

116. Each Defendant is a “covered person” pursuant to CERCLA section 107(a), 42 U.S.C. § 9607(a).

117. The Site is a “facility” within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

118. The “disposal” and/or “treatment” of “hazardous substances” (as those terms are defined at 42 U.S.C. § 9601(14), 42 U.S.C. § 9601(29), 42 U.S.C. § 9603(b)(3), and 42 U.S.C. § 6903(3) and (34)), occurred at the Site.

119. There have been releases or the threat of releases of hazardous substances into the environment at or from the Site within the meaning of section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

120. Plaintiff has taken “response” actions at the Site, within the meaning of section 101(25) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), and has incurred costs in connection with taking those “response” actions. The costs incurred by Plaintiff in connection with the Site are consistent with the National Contingency Plan, promulgated under section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300, *et seq.* Because of the disposal, release, or threatened release of hazardous substances at or from the Site, Plaintiff has and will continue to incur response costs in connection with the Site, including conducting sampling for hazardous substances; investigating conditions at the Site; undertaking response actions to address the Site contamination; and identifying and investigating persons who may be liable for response costs at the Site. To date, Plaintiff has incurred more than \$10 million in response costs at the Site.

121. Pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the Defendants, except MDT, is jointly and severally liable to

Plaintiff for all costs incurred by the Plaintiff to date in connection with the Site.

COUNT 2 — CONTRIBUTION UNDER CECRA
(ALL DEFENDANTS)³

122. The allegations in paragraphs 1 through 121 are re-alleged and incorporated herein by reference.

123. Plaintiff brings a claim for contribution pursuant to CECRA § 75-10-724, for its remedial action costs incurred relating to the Site. Plaintiff received notice pursuant to CECRA § 75-10-711 of its potential liability under CECRA § 75-10-715. Plaintiff was then designated lead PLP pursuant to CECRA § 75-10-746 and has incurred response and remedial action costs in its cleanup of the Site. The Defendants to this lawsuit are each potentially liable under § 75-10-715. Accordingly, each of the Defendants is jointly and severally liable to Plaintiff for the response and remedial action costs incurred by the Plaintiff to date in connection with the Site.

³ Yale Oil and Montana Refining are dissolved entities, so they are “orphan parties” whose shares of liability may be allocated among the remaining parties as the Court deems fair.

COUNT 3 — DECLARATORY RELIEF UNDER CERCLA
(ALL DEFENDANTS EXCEPT MDT)

124. The allegations in paragraphs 1 through 123 are re-alleged and incorporated herein by reference.

125. A present, actual, and justiciable controversy exists between Plaintiff and the Defendants concerning the nature and extent of the obligation of the Defendants to pay for anticipated future response costs or damages in connection with the Site.

126. In connection with Plaintiff's claims for cost recovery, CERCLA section 113(g)(2), 42 U.S.C. § 9613(g)(2), requires the Court to "enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

127. Pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), Plaintiff is entitled to a judgment declaring each Defendant's respective share of liability for future response costs or damages to be incurred by Plaintiff in connection with the Site, including amounts

attributable to any orphan parties and applicable interest as provided for in CERCLA section 107(a), 42 U.S.C. § 9607(a).⁴

COUNT 4 — DECLARATORY RELIEF UNDER CECRA (ALL DEFENDANTS)

128. The allegations in paragraphs 1 through 127 are re-alleged and incorporated herein by reference.

129. A present, actual, and justiciable controversy exists between Plaintiff and the Defendants concerning the nature and extent of the obligation of the Defendants to pay for anticipated future response costs or damages in connection with the Site.

130. Pursuant to CECRA § 75-10-724, Plaintiff is entitled to a judgment declaring each Defendant liable for future response and remedial action costs to be incurred by Plaintiff in connection with the Site that will be binding on any subsequent action or actions to recover further response costs.

⁴ Plaintiff is not seeking a declaratory judgment pursuant to CERCLA against Defendant MDT.

PRAYER

WHEREFORE, Plaintiff EM prays that:

- A.** All Defendants, except MDT, be held jointly and severally liable for cost recovery pursuant to CERCLA § 107, 42 U.S.C. § 9607, for all response costs which are consistent with the National Contingency Plan incurred in the past or in the future by Plaintiff relating to the Site;
- B.** All Defendants be held jointly and severally liable for contribution pursuant to CECRA §§ 75-10-715 and 75-10-724 for costs incurred, and to be incurred, by EM in performing response actions related to the alleged release or threatened release of hazardous and/or deleterious substances at the Site and that Defendants' liability be apportioned pursuant to CECRA § 75-10-750, including those costs which would otherwise be apportioned to a PLP whose share is now an "orphan share" under CECRA, for contribution for all remedial action costs incurred in the past or in the future by Plaintiff relating to the Site;

- C.** The Court enter against each of the Defendants, except MDT, and in favor of the Plaintiff, pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and CECRA §§ 75-10-724 and 75-10-715, a declaratory judgment on liability for response and remedial action costs to be incurred in the future by Plaintiff in connection with the Site that will be binding on any subsequent action or actions to recover further response costs;
- D.** The Court enter against MDT, and in favor of the Plaintiff, pursuant to CECRA § 75-10-724, a declaratory judgment on liability for response and remedial action costs to be incurred in the future by Plaintiff in connection with the Site that will be binding on any subsequent action or actions to recover further response costs;
- E.** Plaintiff receives its reasonable attorneys' fees and costs to the extent recoverable; and
- F.** Plaintiff receives pre- and post-judgment interest and any other relief as the Court may deem just and proper.

Dated: March 10, 2026

Respectfully submitted,

/s/ Michael P. Manning
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