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OCT - 4 2001

ATTORNEY GENERAL
CARSON CITY, NEVADA

October 3, 2001

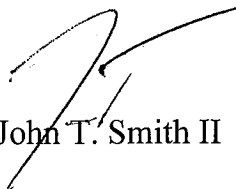
VIA FEDERAL EXPRESS

William J. Frey
Deputy Attorney General
State of Nevada
100 North Carson Street
Carson City, NY 89701

Dear Bill:

Enclosed are two copies of the AOC executed by Kerr-McGee Chemical LLC. I trust that you will arrange signature and date of the AOC by Nevada and that you will return a fully executed copy for our records.

Sincerely,



John T. Smith II

Enclosure

ADMINISTRATIVE ORDER ON CONSENT

This Administrative Order on Consent (AOC) is made and entered into this 8TH day of October 2001, by and between the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection ("NDEP" or "Division") and Kerr-McGee Chemical LLC, a Delaware Limited Liability Company ("Kerr-McGee"). Kerr-McGee and the Division are referred to collectively herein as the "Parties."

WHEREAS, the Parties entered a Consent Agreement in July 1999, (the "Phase I Agreement"), to govern implementation of a removal action addressing perchlorate in surface water in a seep adjacent to the Las Vegas Wash;

WHEREAS, Kerr-McGee began in November 1999, the treatment of perchlorate contaminated seep water using a temporary, ion-exchange system and has discharged treated water from the system under Clean Water Act permits issued by the Division;

WHEREAS, consistent with Paragraph II.4. of the Phase I agreement, the Parties have been cooperating in resolving issues regarding discharge of groundwater after treatment for perchlorate, including issues relating to necessary permits, and, on August 7, 2000, NDEP issued Kerr-McGee a five-year permit for discharge of effluent from a proposed remedial system, which includes the possibility of Division authorization of discharge of treated groundwater as well as seep water;

WHEREAS, Kerr-McGee wants to cooperate fully with the Division in addressing the problem of perchlorate releases in the Henderson, Nevada area, while preserving its rights to seek contribution from third parties who are likely to share responsibility for these releases, including, but not limited to, the United States Navy and PEPCON;

NOW THEREFORE, in consideration of and in exchange for the mutual undertakings and covenants herein, intending to be legally bound hereby, the Division and Kerr-McGee agree as follows:

I. STATEMENT OF PURPOSE

The Division and Kerr-McGee are entering into this AOC to document their respective rights and responsibilities during the conduct of a perchlorate remedial action designed to reduce the amount of perchlorate in ground and surface water reaching the Las Vegas Wash ("Wash") and Lake Mead in both the near and long-term, and to continue to provide for reimbursement to the Division of Kerr-McGee's fair share of oversight costs incurred by the Division with respect to cleanup of perchlorate in the groundwater.

II. WORK TO BE PERFORMED

1. The parties intend that the work to be performed in accordance with this AOC shall be carried out in manner consistent with applicable federal and Nevada statutes, implementing regulations, and with the National Contingency Plan, 40 C.F.R. § 300.1 *et seq.*

2. Upon execution of this AOC, Kerr-McGee shall promptly complete construction of a treatment system capable of treating 825 gallons per minute for removal of the perchlorate and subsequent discharge in accordance with the permit limits set forth in NPDES Permit No. NV0023060 of August 7, 2000, and shall undertake certain related measures pursuant to the schedule set forth herein:

A. **Slurry Wall** -- Kerr-McGee is installing a slurry wall downgradient of its chromium recovery line wells to increase the capture of perchlorate flux at this location. Kerr-McGee expects to complete construction of this slurry wall by October 31, 2001.

B. **Athens Road Groundwater Extraction** -- Kerr-McGee will complete installation of an extraction well system at the Athens Road area, designed to remove up to 400 gallons per minute of groundwater with the objective of capturing perchlorate flux at this location. Kerr-McGee shall begin operation of this extraction system as soon as it begins operation of the planned Ion Exchange/Catalytic Destruction Plant as set forth in Section II.2.E. below.

C. **Las Vegas Wash and Seep** -- Kerr-McGee has installed and tested four wells to recover approximately 350 gallons per minute of groundwater in the area of the seep adjacent to the Wash. These wells will be used to enable extraction of approximately 35 million gallons of groundwater for conveyance to the 11 acre pond on Kerr-McGee's property and thereby increase the amount of perchlorate removed from the area adjacent to the Wash. Assuming City of Henderson approval of the necessary permit, installation of pipelines connecting the wells to Lift Station No. 1 will be completed by October 31, 2001, to coincide with completion of the pipeline work described in Section II.2.D.

D. **Pipeline from Las Vegas Wash to Kerr-McGee Facility** -- Kerr-McGee has begun construction of pipelines and associated Lift Station No. 2 to carry water from the Las Vegas Wash area to its plant and to return treated water to the Wash for discharge. Construction of the pipelines and Lift Station will be completed by October 31, 2001.

E. **New Ion Exchange/Catalytic Destruction Plant** -- Kerr-McGee is engineering and installing a new treatment plant with a capacity of 825 gallons per minute. Kerr-McGee will complete mechanical construction of this plant by January 15, 2002, and shall begin treating perchlorate containing water by February 28, 2002.

F. **Existing Ion Exchange**—Upon startup of the new treatment plant, Kerr McGee agrees to maintain the existing ion exchange system in a ready mode for contingency use for one year unless NDEP and Kerr McGee mutually agree it is no longer needed.

III. **STIPULATED PENALTIES**

Unless there has been a written modification approved by NDEP, any failure by Kerr-McGee to meet a schedule deadline or otherwise carry out the work described in Section II may result in NDEP assessing stipulated penalties against Kerr-McGee. All penalty amounts are maximum amounts. Nothing in this AOC shall be construed to limit in any manner NDEP's discretion with respect to whether to take enforcement action or to assess less than the maximum penalty. Failure to commence, perform and/or complete work as described in Section II in a manner acceptable to NDEP will result in the following penalties subject, however, to a cap of \$250,000:

<u>Period of Noncompliance</u>	<u>Maximum Penalty per Day</u>
1 st – 7 th day	\$ 1,000
8 th – 21 st day	\$ 2,500
22 nd day and thereafter	\$ 5,000

The assessment of stipulated penalties shall not alter Kerr-McGee's obligation to comply with the terms of this AOC.

IV. **DISPUTE RESOLUTION**

1. The Parties shall use their best efforts informally and in good faith to resolve any dispute or differences of opinion. The Parties agree that the procedures contained in this Section are the sole and exclusive procedures for resolving disputes arising under this AOC. If Kerr-

McGee fails to follow any of the requirements contained in this Section, then it shall have waived its right to further consideration of the dispute in issue.

2. If Kerr-McGee disagrees, in whole or in part, with any written determination by the Division pursuant to this AOC, Kerr-McGee shall notify the Division in writing of the dispute ("Notice of Dispute").

3. Any dispute that arises under or with respect to this AOC shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed ten (10) days following the date the dispute arises, unless such period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when the Division receives a written Notice of Dispute.

4. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by the Division shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Kerr-McGee invokes the formal dispute resolution procedures of this Section by serving on the Division Administrator a written Statement of Position which shall set forth the specific points of the dispute, the position Kerr-McGee claims should be adopted as consistent with the requirements of this AOC, the basis for Kerr-McGee's position, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by Kerr-McGee, and any matters which it considers necessary for the Administrator's determination. The Statement of Position also may include a request for an opportunity to make an oral presentation of factual data, supporting documentation and expert testimony to the Administrator and to answer questions that the Administrator may pose. It is within the sole discretion of the Administrator to grant or deny a request for an oral presentation.

5. Within fifteen (15) days following receipt of a Statement of Position, or after any oral presentation by Kerr-McGee, the Administrator shall issue his/her decision. The Administrator's written decision shall include a response to Kerr-McGee's arguments and evidence. The written decision of the Administrator shall be incorporated into and become an enforceable element of this AOC, and shall be considered the Division's final decision as provided in paragraph 6 of this Section.

6. As to any final Division decision, Kerr-McGee may, as appropriate, pursue the dispute before the State Environmental Commission ("SEC") as a "contested case" pursuant to NRS §§ 233B.010 *et seq.* and NAC §§ 445.988 – 445.995, and shall be entitled to both administrative and judicial review as provided therein.

V. FORCE MAJEURE

1. Kerr-McGee shall perform the requirements of this AOC within the time limits prescribed, unless the performance is prevented or delayed by events which constitute a *force majeure*. Kerr-McGee shall have the burden of proving such a *force majeure*. A *force majeure*, for purposes of this AOC, is defined as any event arising from causes not reasonably foreseeable and beyond the reasonable control of Kerr-McGee, or of any person or entity controlled by Kerr-McGee, which delays or prevents the timely performance of any obligation under this Consent Agreement despite Kerr-McGee's best efforts to fulfill such obligation. A *force majeure* may include: extraordinary weather events, natural disasters, strikes and lockouts [by other than Kerr-McGee employees], national emergencies, delays in obtaining access or use of property not owned or controlled by Kerr-McGee despite timely best efforts to obtain such access or use approval, and delays in obtaining any required approval or permit from the Division or any other public agency that occur despite Kerr-McGee's complete, timely and appropriate submission of

all information and documentation required for approval or applications for permits within a timeframe that would allow the work to proceed in a manner contemplated by the schedule of the AOC. A *force majeure* does not include (i) increased costs of the work to be performed under the AOC, (ii) financial inability to complete the work or (iii) normal precipitation events.

2. If any event occurs or has occurred that may delay the performance of Kerr-McGee's obligations under this Consent Agreement, whether or not caused by a *force majeure* event, Kerr-McGee shall notify the Division orally within two (2) business days of when Kerr-McGee first knew that the event might cause a delay. If Kerr-McGee wishes to claim a *force majeure* event, then within five (5) business days thereafter, Kerr-McGee shall provide to the Division a written explanation and description of the obligation(s) delayed or affected by the *force majeure* event; the reasons for the delay; the anticipated duration of the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Kerr-McGee's rationale for attributing such delay to a *force majeure* event; and a statement as to whether, in the opinion of Kerr-McGee, such event may cause or contribute to an imminent and substantial hazard to human health, welfare, or the environment. Kerr-McGee shall include with any notice all available documentation supporting its claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Kerr-McGee from asserting any claim of *force majeure* for that event.

3. The Division shall notify Kerr-McGee in writing of its *force majeure* determination within ten (10) days after receipt of the written notice from Kerr-McGee. If the Division determines that the delay has been or will be caused by circumstances constituting 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 the Division in writing for such time as the

Division determines 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, unless Kerr-McGee can demonstrate to the Division's satisfaction that more than one obligation was affected by the *force majeure* event.

4. In the event that the Division and Kerr-McGee cannot agree that any delay or failure has been or will be caused by circumstances constituting a *force majeure*, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section V of this AOC.

VI. REPORTING REQUIREMENTS

1. **Monthly Progress Reports** -- Until Kerr-McGee begins operation of the proposed new ion exchange/catalytic destruction plant, Kerr-McGee shall prepare and provide to NDEP written monthly Progress Reports which: (1) describe the actions which have been taken toward achieving compliance with Section II of this AOC during the previous months, and (2) include information regarding percentage of completion, unresolved delays encountered, or anticipated delays that may affect the future schedule for implementation of the measures described in Section II, including a description of efforts made to mitigate these delays or anticipated delays. Such Progress Reports are to be submitted to NDEP by the 5th day of each month following the month for which the report covers.

2. **Quarterly Progress Reports** -- Once Kerr-McGee begins operation of the new ion exchange/catalytic destruction treatment system, in lieu of the monthly reports described in Section VI.1., Kerr-McGee shall submit to NDEP a written quarterly report describing the operations of its remedial system, including estimates of amounts of perchlorate removed, and

the results of any monitoring of ground or surface water quality. Such quarterly reports shall be due on the 28th day of July, October, January and April for the previous three-month period.

VII. REIMBURSEMENT OF OVERSIGHT COSTS

1. Kerr-McGee shall reimburse the Division for costs reasonably incurred for the oversight of this AOC, following the effective date and for the effective period of this AOC.

2. The Division shall account for oversight costs associated with implementing this AOC and related work and shall submit to Kerr-McGee copies of all invoices on a quarterly basis, commencing with the first full calendar quarter after the effective date of this Consent Agreement. Submittals shall be made promptly after the Division's internal review. Such invoices shall contain sufficient detail to identify individual daily time entries and all invoices or cost details for administrative and vendor expenses (such as travel, training, equipment, photocopying expense and similar items). These invoices shall be prepared consistent with standard State billing practices and shall not require the creation of new billing practices. Amounts due hereunder shall be paid within thirty (30) days after receipt by Kerr-McGee of the invoices. Kerr-McGee may dispute particular invoiced costs if it determines that the Division has made an accounting error or if it alleges that the particular cost is not reimbursable pursuant to paragraph 3. In the event of any such dispute, Kerr-McGee shall pay in a timely fashion undisputed costs. With respect to the disputed cost, Kerr-McGee may pay such amount under protest and without prejudice to recovery of all or any portion thereof at the conclusion of any dispute resolution timely commenced pursuant to Section IV.

3. All payments due by Kerr-McGee shall be by checks payable to the State of Nevada for the full amount due and owing to:

Nevada Division of Environmental Protection
333 W. Nye Lane
Carson City, Nevada 89710

ATTENTION: Chief, Bureau of Corrective Actions

All checks shall reference the Site and Kerr-McGee's name and address.

VIII. RESERVATION OF RIGHTS

1. The Division reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Kerr-McGee's failure to comply with any of the requirements of this AOC or of any requirement of federal or state laws, regulations, or permit conditions. Except as provided in Section VIII (Other Claims; Covenant Not to Sue), this AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the Division has under any applicable statutory or common law authority of the State. This AOC in no way relieves Kerr-McGee of its responsibility to comply with any federal, state or local law or regulation.

2. The Division reserves the right to disapprove work performed by Kerr-McGee pursuant to this AOC subject to Dispute Resolution under Section IV.

3. The Division reserves any and all legal rights and equitable remedies available to enforce (1) the provisions of this AOC, or (2) any applicable provision of state or federal law.

4. Kerr-McGee reserves all rights, claims and/or defenses it may have in any action brought or taken by the Division, the EPA or any third party pursuant to applicable law, with

respect to the specific claims that can be asserted and further reserves the right to pursue potentially responsible parties to recover all costs incurred in the performance of this AOC.

5. Nothing in this AOC shall be construed as an admission of liability by Kerr-McGee.

IX. OTHER CLAIMS: COVENANT NOT TO SUE

Nothing in this AOC shall constitute or be construed as a release from, or covenant not to sue with respect to, any claim, cause of action, demand or defense in law or equity, against any person, firm, partnership, or corporation for, or in respect of any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, management, transportation, release, threatened release, or disposal of any perchlorate at or otherwise associated with the Site, except that the Division covenants not to sue Kerr-McGee with respect to perchlorate contamination at Henderson, Nevada so long as Kerr-McGee is in compliance with the terms of this AOC.

X. APPLICABLE LAW

This AOC shall be construed in accordance with and governed by the law of the State of Nevada.

XI. EFFECTIVE DATE

This AOC shall become effective when it is fully executed by the parties. The effective date will be the date of last signature.

XII. TERMINATION

This AOC shall terminate upon the occurrence of any of the following events:

1. Any agency or department of the United States government asserts and undertakes lead responsibility for addressing perchlorate contamination at Henderson.

2. The Division, Kerr-McGee and any other Party(ies) enter a new order or agreement to govern long-term remedial action with respect to perchlorate contamination and/or other contamination in groundwater at Henderson, and this later agreement expressly supersedes the present AOC.

3. Upon application by Kerr-McGee for termination of this AOC, Kerr-McGee demonstrates to the satisfaction of the Division that response activities have reduced perchlorate concentrations in the Henderson groundwater to a point that continued operation of the treatment system is unlikely to result in further measurable benefit to water quality in the Las Vegas Wash or Lake Mead.

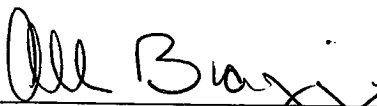
XIII. SIGNATORIES

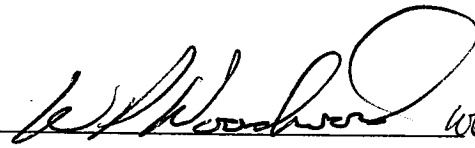
Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this AOC and to legally bind such party to the terms and conditions of this AOC.

IN WITNESS WHEREOF, the Division and Kerr-McGee execute this AOC by their duly authorized representatives on this 8th day of October, 2001.

THE STATE OF NEVADA
DIVISION OF ENVIRONMENTAL
PROTECTION

KERR-McGEE CHEMICAL LLC

By: 
Name: ALLEN BLATCH
Title: ADMINISTRATOR

By: 
Name: W. P. Woodward
Title: Sr. Vice President Chemical

APPROVED AS TO FORM ONLY this 4th day of October, 2001.

Deputy
ATTORNEY GENERAL 

ALAN BINGGI

NOTICE

RE: Remediation of Perchlorate Contamination in Henderson, Nevada

Since detection of low levels of perchlorate in Lake Mead in 1970, Kerr-McGee Chemical LLC has been cooperating with the Nevada Division of Environmental Protection in addressing perchlorate in shallow groundwater in Henderson, Nevada. This groundwater reaches the Las Vegas Wash and contributes to low levels of perchlorate in Lake Mead. It is not known whether there are adverse human health effects associated with exposure to low concentrations (parts per billion) of perchlorate, and the effects, if any, are currently under study.

NDEP has determined that facilities in Henderson presently owned by Kerr-McGee have been a source of the perchlorate now detected in ground and surface waters. Previous owners of the facilities include the United States Government, and particularly the U.S. Navy, which manufactured ammonium perchlorate at Henderson in the period 1953-62.

In 1998, Kerr-McGee installed an 11-acre lined impoundment to capture groundwater containing perchlorate. Since November 1999, Kerr-McGee has been operating a temporary ion exchange system to remove perchlorate from water in a natural seep or spring reaching the Las Vegas Wash. The public has previously been afforded an opportunity to comment on the Clean Water Act permit issued Kerr-McGee by NDEP for discharge of the effluent from this temporary treatment system, as well as on a permit for discharge of larger quantities of effluent from a future, long-term treatment system.

Kerr-McGee and NDEP have now tentatively agreed upon a proposed, longer term plan for addressing perchlorate contamination in the Henderson area. Under this plan, the company will expeditiously construct a new ion exchange/catalytic destruction plant that will be capable of treating 625 gallons per minute of perchlorate containing ground and surface water. The Company will also install a slurry wall at its Henderson facility to enable more complete capture by on-site wells of perchlorate contamination within the Company's property line. Moreover, the Company will install certain new wells and gathering lines near the Las Vegas Wash and will capture 35 million gallons of perchlorate containing groundwater and return it to the Kerr-McGee Henderson plant for treatment in the new treatment plant.

NDEP and Kerr-McGee believe that implementation of these remedial measures should help prevent exceedance of emerging drinking water quality criteria. In water removed from the Lake.

In addition to the prior opportunities for public comment afforded by the Clean Water Act permit proceedings, Kerr-McGee invites public comment on its ongoing efforts to remediate this perchlorate problem and upon the proposed plan for its longer-term remedial system. Persons wishing to comment should do so within 30 days of this Notice by addressing their written or oral comments to: the Environmental Department of Kerr-McGee Chemical LLC, P.O. Box 85, Henderson, NV 89009; (702) 651-2200. Persons wishing further information about this matter should review the documents that Kerr-McGee maintains in a repository at the Henderson Library. Kerr-McGee will hold a public meeting on the proposed plan at 6:00 p.m. on the 13th day of June, 2001, at the Henderson Convention Center, 200 South Water Street, Henderson, Nevada.

PUB: May 30, 2001
LV Review Journal

Doug - FYI - THIS CREATED QUITE A
STIR W BOB HALL. HE THOUGHT IT WAS O.K.

ALAN

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JTSMITH@COV.COM

January 16, 2001

VIA FACSIMILE AND FIRST CLASS MAIL

Doug Zimmerman
Department of Conservation
and Natural Resources
Nevada Division of Environmental Protection
333 W. Nye Lane
Carson City, Nevada 89706-0851

Dear Mr. Zimmerman:

Enclosed is a draft of a proposed Phase II Consent Agreement between Kerr-McGee Chemical LLC and NDEP. It is modeled closely upon the Phase I agreement of July 1999. Kerr-McGee has asked me to handle contacts and inquiries from Nevada regarding this draft.

Kerr-McGee stands ready to finalize the Phase II agreement as promptly as possible. In this regard, you should know that the Company plans to provide a 30-day opportunity for public comment on the long-term remedy in order to comply with the National Contingency Plan. We will be prepared to enter the Phase II agreement once the comment period has run and there is a chance to take due account of any comments received. In light of the prior NPDES permit proceeding and broad awareness in the Las Vegas area of the issue being addressed by NDEP and Kerr-McGee, we do not anticipate extensive public comments on the remedy issue. Nevertheless, you will appreciate that Kerr-McGee needs to meet the NCP public comment requirement before the consent agreement becomes final.

Sincerely,


John T. Smith II

D R A F T

CONSENT AGREEMENT

This Consent Agreement is made and entered into this _____ day of February 2001, by and between the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection ("NDEP" or "Division") and Kerr-McGee Chemical LLC, a Delaware Limited Liability Company ("Kerr-McGee"). Kerr-McGee and the Division are referred to collectively herein as the "Parties."

WHEREAS, the Parties entered a Consent Agreement in July 1999, (the "Phase I Agreement"), to govern implementation of a removal action addressing perchlorate contaminated surface water in a seep adjacent to the Las Vegas Wash;

WHEREAS, Kerr-McGee began in November 1999, the treatment of perchlorate contaminated seep water using a temporary, ion-exchange system and has discharged effluent from the system under Clean Water Act permits issued by the Division;

WHEREAS, Kerr-McGee continues to conduct removal activities and, consistent with Paragraph II.3. of the Phase I Agreement, Kerr-McGee has submitted a Phase II Workplan setting forth a proposed long-term remedy for perchlorate contamination in the seep and in groundwater at Henderson;

WHEREAS, consistent with Paragraph II.4. of the Phase I agreement, the Parties have been cooperating in resolving issues regarding discharge of groundwater after treatment for perchlorate, including issues relating to necessary permits, and, on August 7, 2000, NDEP issued Kerr-McGee a five-year permit for discharge of effluent from a proposed remedial system, which includes the possibility of Division authorization of discharge of treated groundwater as well as seep water;

WHEREAS, Kerr-McGee wants to cooperate fully with the Division in addressing the problem of perchlorate contamination in the Henderson, Nevada area, while preserving its rights to seek contribution from third parties who are likely to share responsibility for this contamination, including, but not limited to, the United States Navy and PEPCON;

NOW THEREFORE, in consideration of and in exchange for the mutual undertakings and covenants herein, intending to be legally bound hereby, the Division and Kerr-McGee agree as follows:

I. STATEMENT OF PURPOSE

The Division and Kerr-McGee are entering into this Agreement to document their respective rights and responsibilities during the conduct of a perchlorate remedial action designed to reduce the amount of perchlorate reaching the Las Vegas Wash and Lake Mead in both the near and long-term, and to continue to provide for reimbursement to the Division of Kerr-McGee's fair share of oversight costs incurred by the Division with respect to cleanup of perchlorate contamination in the groundwater.

II. WORK TO BE PERFORMED

1. The parties intend that the work to be performed in accordance with this Agreement shall be carried out in manner consistent with applicable federal and Nevada statutes, implementing regulations, and with the National Contingency Plan, 40 C.F.R. § 300.1 *et seq.*
2. Upon execution of this Agreement, Kerr-McGee shall promptly complete design and initiate construction of a treatment system capable of treating 825 gallons per minute to achieve 97 percent removal of the perchlorate for discharge in accordance with the permit limits set forth in NPDES Permit No. NV0023060 of August 7, 2000.

3. Within 45 days of execution of this Agreement, Kerr-McGee shall submit a revised Phase II Workplan and detailed schedule for completion of design and construction of this treatment system. Upon its approval, this Workplan shall become an enforceable obligation pursuant to this Consent Agreement. The parties will endeavor to reach mutual agreement on any changes to the Workplan after its submission, but, failing such agreement, the Division's written determination of necessary changes shall control, subject, however, to Kerr-McGee's right to seek dispute resolution pursuant to Section IV below.

III. STIPULATED PENALTIES

Unless there has been a written modification approved by NDEP, any failure by Kerr-McGee to meet a schedule deadline or an approved Workplan condition may result in NDEP assessing stipulated penalties against Kerr-McGee. All penalty amounts are maximum amounts. Nothing in this Agreement shall be construed to limit in any manner NDEP's discretion with respect to whether to take enforcement action or to assess less than the maximum penalty. Failure to commence, perform and/or complete work as described in the approved Workplan in a manner acceptable to NDEP at the scheduled time will result in the following penalties subject, however, to a cap of \$250,000:

<u>Period of Noncompliance</u>	<u>Maximum Penalty per Day</u>
1 st – 7 th day	\$ 1,000
8 th – 21 st day	\$ 2,500
22 nd day and thereafter	\$ 5,000

The assessment of stipulated penalties shall not alter Kerr-McGee's obligation to comply with the terms of this Agreement.

IV. DISPUTE RESOLUTION

1. The Parties shall use their best efforts informally and in good faith to resolve any dispute or differences of opinion. The Parties agree that the procedures contained in this Section are the sole and exclusive procedures for resolving disputes arising under this Consent Agreement. If Kerr-McGee fails to follow any of the requirements contained in this Section, then it shall have waived its right to further consideration of the dispute in issue.

2. If Kerr-McGee disagrees, in whole or in part, with any written determination by the Division pursuant to this Consent Agreement, Kerr-McGee shall notify the Division in writing of the dispute ("Notice of Dispute").

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4. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by the Division shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Kerr-McGee invokes the formal dispute resolution procedures of this Section by serving on the Division Administrator a written Statement of Position which shall set forth the specific points of the dispute, the position Kerr-McGee claims should be adopted as consistent with the requirements of this Consent Agreement, the basis for Kerr-McGee's position, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by Kerr-McGee, and any matters which it considers necessary for the Administrator's determination. The

Statement of Position also may include a request for an opportunity to make an oral presentation of factual data, supporting documentation and expert testimony to the Administrator and to answer questions that the Administrator may pose. It is within the sole discretion of the Administrator to grant or deny a request for an oral presentation.

5. Within fifteen (15) days following receipt of a Statement of Position, or after any oral presentation by Kerr-McGee, the Administrator shall issue his/her decision. The Administrator's written decision shall include a response to Kerr-McGee's arguments and evidence. The written decision of the Administrator shall be incorporated into and become an enforceable element of this Consent Agreement, and shall be considered the Division's final decision as provided in paragraph 6 of this Section.

6. As to any final Division decision, Kerr-McGee may, as appropriate, pursue the dispute before the State Environmental Commission ("SEC") as a "contested case" pursuant to NRS §§ 233B.010 *et seq.* and NAC §§ 445.988 – 445.995, and shall be entitled to both administrative and judicial review as provided therein.

V. FORCE MAJEURE

1. Kerr-McGee shall perform the requirements of this Consent Agreement within the time limits prescribed, unless the performance is prevented or delayed by events which constitute a *force majeure*. Kerr-McGee shall have the burden of proving such a *force majeure*. A *force majeure*, for purposes of this Consent Agreement, is defined as any event arising from causes not reasonably foreseeable and beyond the reasonable control of Kerr-McGee, or of any person or entity controlled by Kerr-McGee, which delays or prevents the timely performance of any obligation under this Consent Agreement despite Kerr-McGee's best efforts to fulfill such obligation. A *force majeure* may include: extraordinary weather events, natural disasters, strikes

and lockouts [by other than Kerr-McGee employees], national emergencies, delays in obtaining access or use of property not owned or controlled by Kerr-McGee despite timely best efforts to obtain such access or use approval, and delays in obtaining any required approval or permit from the Division or any other public agency that occur despite Kerr-McGee's complete, timely and appropriate submission of all information and documentation required for approval or applications for permits within a timeframe that would allow the work to proceed in a manner contemplated by the schedule of the Consent Agreement. A *force majeure* does not include (i) increased costs of the work to be performed under the Consent Agreement, (ii) financial inability to complete the work or (iii) normal precipitation events.

2. If any event occurs or has occurred that may delay the performance of Kerr-McGee's obligations under this Consent Agreement, whether or not caused by a *force majeure* event, Kerr-McGee shall notify the Division orally within two (2) business days of when Kerr-McGee first knew that the event might cause a delay. If Kerr-McGee wishes to claim a *force majeure* event, then within five (5) business days thereafter, Kerr-McGee shall provide to the Division a written explanation and description of the obligation(s) delayed or affected by the *force majeure* event; the reasons for the delay; the anticipated duration of the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Kerr-McGee's rationale for attributing such delay to a *force majeure* event; and a statement as to whether, in the opinion of Kerr-McGee, such event may cause or contribute to an imminent and substantial hazard to human health, welfare, or the environment. Kerr-McGee shall include with any notice all available documentation supporting its claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Kerr-McGee from asserting any claim of *force majeure* for that event.

3. The Division shall notify Kerr-McGee in writing of its *force majeure* determination within ten (10) days after receipt of the written notice from Kerr-McGee. If the Division determines that the delay has been or will be caused by circumstances constituting a *force majeure* event, the time for performance of the obligations under this Consent Agreement that are affected by the *force majeure* event will be extended by the Division in writing for such time as the Division determines 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, unless Kerr-McGee can demonstrate to the Division's satisfaction that more than one obligation was affected by the *force majeure* event.

4. In the event that the Division and Kerr-McGee cannot agree that any delay or failure has been or will be caused by circumstances constituting a *force majeure*, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section V of this Consent Agreement.

VI. REIMBURSEMENT OF OVERSIGHT COSTS

1. Kerr-McGee shall reimburse the Division for costs reasonably incurred for the oversight of this Consent Agreement, following the effective date and for the effective period of this Consent Agreement.

2. The Division shall account for oversight costs associated with implementing this Consent Agreement and related work and shall submit to Kerr-McGee copies of all invoices on a quarterly basis, commencing with the first full calendar quarter after the effective date of this Consent Agreement. Submittals shall be made promptly after the Division's internal review. Such invoices shall contain sufficient detail to identify individual daily time entries and all invoices or cost details for administrative and vendor expenses (such as travel, training,

equipment, photocopying expense and similar items). These invoices shall be prepared consistent with standard State billing practices and shall not require the creation of new billing practices. Amounts due hereunder shall be paid within thirty (30) days after receipt by Kerr-McGee of the invoices. Kerr-McGee may dispute particular invoiced costs if it determines that the Division has made an accounting error or if it alleges that the particular cost is not reimbursable pursuant to paragraph 3. In the event of any such dispute, Kerr-McGee shall pay in a timely fashion undisputed costs. With respect to the disputed cost, Kerr-McGee may pay such amount under protest and without prejudice to recovery of all or any portion thereof at the conclusion of any dispute resolution timely commenced pursuant to Section IV.

3. All payments due by Kerr-McGee shall be by checks payable to the State of Nevada for the full amount due and owing to:

Nevada Division of Environmental Protection
333 W. Nye Lane
Carson City, Nevada 89710

ATTENTION: Chief, Bureau of Corrective Actions

All checks shall reference the Site and Kerr-McGee's name and address.

VII. RESERVATION OF RIGHTS

1. The Division reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Kerr-McGee's failure to comply with any of the requirements of this Consent Agreement or of any requirement of federal or state laws, regulations, or permit conditions. Except as provided in Section VIII (Other Claims; Covenant Not to Sue), this Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the Division has under any applicable statutory or common law authority of the State.

This Consent Agreement in no way relieves Kerr-McGee of its responsibility to comply with any federal, state or local law or regulation.

2. The Division reserves the right to disapprove work performed by Kerr-McGee pursuant to this Consent Agreement subject to Dispute Resolution under Section IV.

3. The Division reserves any and all legal rights and equitable remedies available to enforce (1) the provisions of this Agreement, or (2) any applicable provision of state or federal law.

4. Kerr-McGee reserves all rights, claims and/or defenses it may have in any action brought or taken by the Division, the EPA or any third party pursuant to applicable law, with respect to the specific claims that can be asserted and further reserves the right to pursue potentially responsible parties to recover all costs incurred in the performance of this Agreement.

5. Nothing in this Consent Agreement shall be construed as an admission of liability by Kerr-McGee.

VIII. OTHER CLAIMS; COVENANT NOT TO SUE

Nothing in this Consent Agreement shall constitute or be construed as a release from, or covenant not to sue with respect to, any claim, cause of action, demand or defense in law or equity, against any person, firm, partnership, or corporation for, or in respect of any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, management, transportation, release, threatened release, or disposal of any perchlorate at or otherwise associated with the Site, except that the Division covenants not to sue Kerr-McGee with respect to perchlorate contamination at Henderson, Nevada so long as Kerr-McGee is in compliance with the terms of this Consent Agreement.

IX. APPLICABLE LAW

This Agreement shall be construed in accordance with and governed by the law of the State of Nevada.

X. EFFECTIVE DATE

This Agreement shall become effective when it is fully executed by the parties. The effective date will be the date of last signature.

XI. TERMINATION

This Agreement shall terminate upon the occurrence of any of the following events:

1. Any agency or department of the United States government asserts and undertakes lead responsibility for addressing perchlorate contamination at Henderson.
2. The Division, Kerr-McGee and any other Party(ies) enter a new consent agreement to govern long-term remedial action with respect to perchlorate contamination and/or other contamination in groundwater at Henderson, and this later agreement expressly supersedes the present Agreement.
3. Upon application by Kerr-McGee for termination of this Consent Agreement, Kerr-McGee demonstrates to the satisfaction of the Division that response activities have reduced perchlorate concentrations in the Henderson groundwater to a point that continued operation of the treatment system is unlikely to result in further measurable benefit to water quality in the Las Vegas Wash or Lake Mead.

XII. SIGNATORIES

Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Agreement and to legally bind such party to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Division and Kerr-McGee execute this Consent Agreement by their duly authorized representatives on this _____ day of February, 2001.

THE STATE OF NEVADA
DIVISION OF ENVIRONMENTAL
PROTECTION

KERR-McGEE CHEMICAL LLC

By:

Name:

Title:

By:

Name:

Title:

APPROVED AS TO FORM ONLY this _____ day of _____, 2001.

ATTORNEY GENERAL