

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

HILDA L. SOLIS, SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :
: OSHRC Docket Nos. 10-1613,
: 10-1823, 10-2334, 10-2342,
: 10-2586, 10-2640, 10-2641, 11-0514
Complainant, :
:
:
:
v. :
:
:
U.S. MINERALS, L.L.C. :
:
:
Respondent. :
:

STIPULATION AND AGREEMENT

I.

Scope and Intent of Agreement

A. Complainant, Hilda L. Solis, Secretary of Labor, United States Department of Labor, through the Occupational Safety and Health Administration ("OSHA") and Respondent, U.S. Minerals, L.L.C. ("US Minerals"), submit the following stipulation and agreement

("Agreement") pursuant to Rule 2200.100 of the Occupational Safety and Health Review Commission ("OSHRC") Rules of Procedure.

B. This Agreement constitutes a full and complete settlement of the contested Citations, proposed penalties, and abatement dates at issue and disposes of all issues in the above-styled case, OSHRC Docket Nos. 10-1613, 10-1823, 10-2334, 10-2342, 10-2586, 10-2640, 10-2641 and 11-0514 arising from OSHA Inspection Nos. 313014490, 313014920, 313030678, 313030637, 312922677, 313015851, 313015877 and 313016743.

C. Respondent's employees are not represented by a certified bargaining representative.

D. The Citations are amended to include the abatement requirements as described in this Agreement below and they are intended to apply to all existing and new US Minerals facilities under federal OSHA jurisdiction but excluding those US Minerals facilities located in states that administer state plans approved under Section 18 of the Occupational Safety and Health Act of 1970, 29 CFR U.S.C. § 651, *et seq.* (the "Act").

II.

Amendment of the Citations

A. The parties agree that the citations described above are amended by this Agreement to include the full terms of this Agreement including the abatement actions and dates stated herein.

B. The issued Citations are amended as follows:

1. Inspection No. 313014490, OSHRC Case No. 10-1613

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item No. 3 of

Citation No. 1 as a Serious violation and in lieu thereof reclassifying it as Other Than Serious.

2. Inspection No. 313014920, OSHRC Case No. 10-1823

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item Nos. 2a, 2b, 3 and 6 of Citation No. 1 as Serious violations and in lieu thereof reclassifying them as Other Than Serious.

3. Inspection No. 313030678, OSHRC Case No. 10-2334

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item Nos. 8, 9a, 9b, 10 and 11 of Citation No. 1 as Serious violations and in lieu thereof reclassifying them as Other Than Serious.

b. Complainant hereby amends Citations and Notification of Penalties, as amended in the Complaint, by deleting any reference to Item No. 5 of Citation No. 1.

c. Complainant hereby amends Citations and Notification of Penalties, as amended in the Complaint, by deleting any reference to Item No. 1 of Citation No. 3.

4. Inspection No. 313030637, OSHRC Case No. 10-2342

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item Nos. 4, 5, 6, 7, 8 and 9 of Citation No. 1 as Serious violations and in lieu thereof reclassifying them as Other Than Serious.

b. Complainant hereby amends Citations and Notification of

Penalties, as amended in the Complaint, by deleting any reference to Item Nos. 3a and 3b of Citation No. 1.

5. Inspection No. 312922677, OSHRC Case No. 10-2586

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item Nos. 8, 10, 15, 16, 17, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34 of Citation No. 1 as Serious violations and in lieu thereof reclassifying them as Other Than Serious.

b. Complainant hereby amends Citations and Notification of Penalties, as amended in the Complaint, by deleting any reference to Item Nos. 9, 11, 18, 19, 20 and 35 of Citation No. 1.

6. Inspection No. 313015851, OSHRC Case No. 10-2640

a. The Items remain as classified in the Citations and Notification of Penalties, as amended in the complaint.

7. Inspection No. 313015877, OSHRC Case No. 10-2641

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item Nos. 2 and 4 of Citation No. 1 as Serious violations and in lieu thereof reclassifying them as Other Than Serious.

8. Inspection No. 313016743, OSHRC Case No. 11-0514

a. Complainant hereby amends the Citations and Notification of Penalties, as amended in the Complaint, by withdrawing any and all reference to Item No. 3 of Citation No. 1 as a Serious violation and in lieu thereof reclassifying it as Other Than Serious.

C. The penalties proposed in the citations subject to this Agreement are amended to

total \$700,000. The penalties shall be assessed as follows:

1. Inspection No. 313014490, OSHRC Case No. 10-1613

Citation 1, Item 1	\$1,977.14
Citation 1, Item 2	\$1,977.14
Citation 1, Item 3	\$1,977.13
Citation 2, Item 1	\$26,361.80
Citation 2, Item 2	\$26,361.80
Citation 3, Item 1	\$3,954.27
Citation 3, Item 2	\$3,954.27
Citation 3, Item 3	\$3,954.27
Citation 3, Item 4	\$3,954.27

2. Inspection No. 313014920, OSHRC Case No. 10-1823

Citation 1, Item 1	\$753.19
Citation 1, Item 2a	\$564.90
Citation 1, Item 2b	\$0.00
Citation 1, Item 3	\$564.90
Citation 1, Item 4a	\$2,636.18
Citation 1, Item 4b	\$0.00
Citation 1, Item 5	\$2,636.18
Citation 1, Item 6	\$564.90
Citation 1, Item 7	\$753.19
Citation 1, Item 8	\$753.19
Citation 1, Item 9a	\$564.90

Citation 1, Item 9b	\$0.00
Citation 1, Item 10	\$2,636.18
Citation 1, Item 11	\$2,636.18
Citation 1, Item 12	\$2,636.18
Citation 2, Item 1	\$26,361.80
Citation 2, Item 2	\$26,361.80
Citation 2, Item 3	\$26,361.80
Citation 2, Item 4	\$26,361.80
Citation 2, Item 5a	\$26,361.80
Citation 2, Item 5b	\$0.00
Citation 2, Item 6a	\$26,361.80
Citation 2, Item 6b	\$0.00
Citation 2, Item 7a	\$26,361.80
Citation 2, Item 7b	\$0.00
Citation 3, Item 1	\$1,506.39
Citation 3, Item 2	\$5,272.36
Citation 3, Item 3	\$5,272.36
Citation 3, Item 4	\$1,506.39
Citation 3, Item 5	\$1,506.39
Citation 3, Item 6	\$1,129.79
Citation 4, Item 1	\$376.60
Citation 4, Item 2	\$376.60
Citation 4, Item 3	\$376.60

Citation 4, Item 4 \$0.00

3. Inspection No. 313030678, OSHRC Case No. 10-2334

Citation 1, Item 1	\$2,046.68
Citation 1, Item 2a	\$2,046.68
Citation 1, Item 2b	\$0.00
Citation 1, Item 3a	\$2,046.68
Citation 1, Item 3b	\$0.00
Citation 1, Item 4	\$2,046.68
Citation 1, Item 6	\$730.96
Citation 1, Item 7	\$2,046.68
Citation 1, Item 8	\$2,046.68
Citation 1, Item 9a	\$2,046.68
Citation 1, Item 9b	\$0.00
Citation 1, Item 10	\$730.96
Citation 1, Item 11	\$730.96
Citation 2, Item 1	\$4,093.37
Citation 2, Item 2	\$4,093.37
Citation 2, Item 3	\$4,093.37
Citation 3, Item 2a	\$242.38
Citation 3, Item 2b	\$0.00

4. Inspection No. 313030637, OSHRC Case No. 10-2342

Citation 1, Item 1	\$2,040.10
Citation 1, Item 2	\$2,040.10

Citation 1, Item 4	\$728.60
Citation 1, Item 5	\$2,040.10
Citation 1, Item 6	\$728.61
Citation 1, Item 7	\$728.61
Citation 1, Item 8	\$728.61
Citation 1, Item 9	\$728.61
Citation 2, Item 1	\$2,040.10
Citation 2, Item 2	\$4,080.20
Citation 2, Item 3	\$4,080.20
Citation 2, Item 4	\$1,457.22
Citation 2, Item 5	\$1,457.22

5. Inspection No. 312922677, OSHRC Case No. 10-2586

Citation 1, Item 1	\$2,087.23
Citation 1, Item 2	\$2,087.23
Citation 1, Item 3	\$2,087.23
Citation 1, Item 4	\$745.44
Citation 1, Item 5	\$596.35
Citation 1, Item 6	\$2,087.23
Citation 1, Item 7	\$2,087.23
Citation 1, Item 8	\$596.35
Citation 1, Item 10	\$596.35
Citation 1, Item 12	\$2,087.23
Citation 1, Item 13	\$2,087.23

Citation 1, Item 14	\$2,087.23
Citation 1, Item 15	\$2,087.23
Citation 1, Item 16	\$745.44
Citation 1, Item 17	\$596.35
Citation 1, Item 21	\$2,087.23
Citation 1, Item 22a	\$2,087.23
Citation 1, Item 22b	\$0.00
Citation 1, Item 23	\$1,490.88
Citation 1, Item 24	\$745.44
Citation 1, Item 25	\$2,087.23
Citation 1, Item 26	\$745.44
Citation 1, Item 27	\$1,490.88
Citation 1, Item 28	\$745.44
Citation 1, Item 29	\$2,087.23
Citation 1, Item 30	\$1,490.88
Citation 1, Item 31	\$1,043.62
Citation 1, Item 32	\$2,087.23
Citation 1, Item 33	\$2,087.23
Citation 1, Item 34	\$2,087.23
Citation 2, Item 1	\$27,829.75
Citation 2, Item 2	\$27,829.75
Citation 2, Item 3	\$27,829.75

6. Inspection No. 313015851, OSHRC No. 10-2640

Citation 1, Item 1a	\$423.67
Citation 1, Item 1b	\$0.00
Citation 1, Item 1c	\$0.00
Citation 1, Item 2a	\$1,977.14
Citation 1, Item 2b	\$0.00
Citation 1, Item 3	\$1,977.13
Citation 1, Item 4	\$1,977.13
Citation 1, Item 5a	\$1,977.14
Citation 1, Item 5b	\$0.00
Citation 2, Item 1	\$26,361.80
Citation 2, Item 2	\$26,361.80
Citation 2, Item 3a	\$26,261.80
Citation 2, Item 3b	\$0.00
Citation 3, Item 1	\$3,954.27
Citation 3, Item 2	\$3,954.27
Citation 4, Item 1	\$282.45
Citation 4, Item 2	\$282.45
Citation 4, Item 3	\$282.45
Citation 4, Item 4	\$0.00

7. Inspection No. 313015877, OSHRC Case No. 10-2641

Citation 1, Item 1	\$564.90
Citation 1, Item 2	\$564.90
Citation 1, Item 3	\$564.90

Citation 1, Item 4	\$564.90
Citation 1, Item 5	\$706.12
Citation 2, Item 1	\$26,361.80
Citation 2, Item 2	\$26,361.80
Citation 2, Item 3a	\$26,361.80
Citation 2, Item 3b	\$0.00
Citation 3, Item 1	\$1,129.78
Citation 3, Item 2	\$2,824.48
Citation 3, Item 3	\$1,412.24
Citation 3, Item 4a	\$1,412.24
Citation 3, Item 4b	\$0.00
Citation 3, Item 5	\$1,412.24
Citation 4, Item 1	\$0.00

8. Inspection No. 313016743, OSHRC Case No. 11-0514

Citation 1, Item 1	\$1,412.24
Citation 1, Item 2	\$1,412.24
Citation 1, Item 3	\$1,412.24
Citation 2, Item 1	\$26,361.80
Citation 3, Item 1	\$2,824.48
Citation 3, Item 2	\$2,824.48
Citation 3, Item 3	\$2,824.48

III.

Withdrawal of Notice of Contest and Entry of Final Order

Respondent hereby withdraws its notices of contest to the citations, proposed penalties and abatement dates, as amended and set forth herein, and the parties agree to the entry of a final enforceable order of the OSHRC consistent with the terms of this Agreement.

IV.

Payment of Penalties

A. Respondent agrees to pay the total sum of \$700,000.00 (Seven Hundred Thousand Dollars), broken down into separate checks, within fifteen (15) days following the date of Respondent's signature to this Agreement in accordance with the following payment plans:

B. Respondent agrees to pay the sum of \$74,472.09 in connection with OSHRC 10-1613/OSHA Inspection No. 3130144490. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462**. The check shall be made payable to "*U.S. Department of Labor--OSHA*."

C. Respondent agrees to pay the sum of \$219,606.15 in connection with OSHRC 10-1823/OSHA Inspection No. 313014920. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462**. The check shall be made payable to "*U.S. Department of Labor--OSHA*."

D. Respondent agrees to pay the sum of \$29,042.13 in connection with OSHRC 10-2334/OSHA Inspection No. 313030678. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health**

Administration, Baton Rouge Area Office, 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge LA 70809-2985. The check shall be made payable to "*U.S. Department of Labor--OSHA.*"

- E. Respondent agrees to pay the sum of \$22,878.28 in connection with OSHRC 10-2342/Inspection No. 313030637. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Baton Rouge Area Office, 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge LA 70809-2985.** The check shall be made payable to "*U.S. Department of Labor--OSHA.*"
- F. Respondent agrees to pay the sum of \$128,513.79 in connection with OSHRC 10-2586/Inspection No. 312922677. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Houston South Area Office, 17625 El Camino Real, Suite 400, Houston TX 77058-3077.** The check shall be made payable to "*U.S. Department of Labor--OSHA.*"
- G. Respondent agrees to pay the sum of \$96,173.50 in connection with OSHRC 10-2640/Inspection No. 313015851. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.** The check shall be made payable to "*U.S. Department of Labor--OSHA.*"
- H. Respondent agrees to pay the sum of \$90,242.10 in connection with OSHRC 10-2641/Inspection No. 313015877. Respondent shall tender payment to the U.S.

Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.** The check shall be made payable to "*U.S. Department of Labor--OSHA.*"

- I. Respondent agrees to pay the sum of \$39,071.96 in connection with OSHRC 11-0514/Inspection No. 313016743. Respondent shall tender payment to the U.S. Department of Labor, OSHA, in care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.** The check shall be made payable to "*U.S. Department of Labor--OSHA.*"

V.

Abatement, Certification and Documentation

Respondent represents that the violations alleged in the Citations issued on have been abated or will be abated no later than August 31, 2012. Respondent will comply with all applicable abatement verification provisions of 29 CFR 1902.19, including but not limited to, all certification, documentation, and posting requirements. Abatement certification for the Citations and the specific abatement measures set forth in Parts VI and VII of this Agreement shall be accomplished by providing a Certificate of Abatement no later than September 28, 2012, or in accordance with the applicable abatement deadlines established herein, by mailing a letter to each OSHA Area Office as set forth below certifying that affected employees and their representatives have been informed of the abatement measures taken:

- a. OSHRC 10-1615/Inspection No. 3130144490. In care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West**

Commerce Drive, Peoria, Illinois 61615-1462.

- b. OSHRC 10-1823/Inspection No. 313014920. In care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.**
- c. OSHRC 10-2334/Inspection No. 313030678. In care of: **Occupational Safety and Health Administration, Baton Rouge Area Office, 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge LA 70809-2985.**
- d. OSHRC 10-2342/Inspection No. 313030637. In care of: **Occupational Safety and Health Administration, Baton Rouge Area Office, 9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge LA 70809-2985.**
- e. OSHRC 10-2586/Inspection No. 312922677. **Occupational Safety and Health Administration, Houston South Area Office, 17625 El Camino Real, Suite 400, Houston TX 77058-3077.**
- f. OSHRC 10-2640/Inspection No. 313015851. In care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.**
- g. OSHRC 10-2641/Inspection No. 313015877. In care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.**
- h. OSHRC 11-0514/Inspection No. 313016743. In care of: **Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Peoria, Illinois 61615-1462.**

Required abatement documentation shall be submitted along with the abatement

certification.

VI.

Corporate-Wide Additional Abatement Measures

Abatement measures described in Paragraphs VI (A)-(D) apply to Respondent's facilities located in states under federal OSHA jurisdiction (the "covered facilities").

A. Safety Structure Improvements

1. Full-time Safety Manager. Within 90 days after the effective date of this agreement, Respondent shall furnish the name and curriculum vitae of the person or persons whom Respondent proposes to retain a qualified individual to serve as full-time safety manager for Respondent's facilities. OSHA has fifteen (15) days to object to the selection. If OSHA objects, Respondent shall continue the search until it locates a person to whom OSHA does not object. That person shall be retained by Respondent promptly following expiration of the fifteen (15) day period without objection. This process will not extend the abatement, certification, and document submission dates set forth in this Agreement. The safety manager shall be supervised and report to the most senior level manager as follows: Vice President of Operations at Respondent's corporate headquarters. The safety manager shall have authority to suspend work until any health and safety issue has been abated, without first referring the matter to any other person in the partnership's hierarchy.

2. Internal safety inspections. Respondent agrees that the safety manager will conduct a random, unannounced safety audit each quarter at each covered facility and complete a report of the findings. A system will be established to track the findings until hazards are addressed or eliminated. Facility management is required to implement any recommendations within thirty (30) days. If a corrective measure cannot be implemented within thirty (30) days,

the reason, and the interim measures taken and their date of implementation, shall be documented.

3. Internal complaints and suggestions. Respondent agrees to establish a system for employees to notify Respondent's management, including the safety manager, anonymously and without fear of reprisal. The system shall include procedures to advise the employee, if known, of the status of implemented and proposed actions to address the complaint within thirty (30) days, and shall track the complaints, management's responses and the actions taken to resolve the issue.

4. Medical Monitoring.

Respirator workplace evaluation: The Consultant/Auditor hired pursuant to Section VI. C. below shall make recommendations as to in which area(s) there is potential employee exposure to silica at or above the OSHA PEL. The employer shall conduct personal air monitoring in those areas periodically, at intervals recommended by the Consultant/Auditor, to assure that the assigned respiratory protection provides adequate protection for the employees.

Medical surveillance program: The employer shall develop and implement an effective medical surveillance program to protect workers against the early onset of respiratory disease. This medical surveillance program shall provide pre-placement baseline medical examinations to employees who are potentially exposed to crystalline silica at one-half the permissible exposure limit or more. This program shall contain at minimum the following elements:

A medical examination emphasizing the respiratory system, as well as an occupational and medical history;

- A chest roentgenogram (X-ray), posteroanterior 14" x 17" or 14" x 14", classified according to the latest version ILO International Classification of Radiographs of Pneumoconiosis (ILO, 1982 or later edition), and read by a board certified radiologist or certified class "B" reader.
- This program shall provide a medical examination emphasizing the respiratory system and a chest X-ray every three years to workers who have less than 15 years of crystalline silica exposure, every two years if the worker has 15 to 20 years of exposure, and annually if the worker has 20 or more years of exposure.

The medical surveillance program is to begin implementation within 30 days of the signing of this agreement and will be completed upon two years of Respirator workplace evaluations described in this section without over exposure

5. NIOSH Study. Within thirty (30) days of execution of this Agreement, Respondent shall contact the National Institute for Occupational Safety and Health ("NIOSH") and request that NIOSH perform a study of the health effects on US Mineral employees of their exposure to dust at their worksite.

6. MSDSs. Respondent shall request that NIOSH consult on the adequacy of the Material Safety Data Sheets ("MSDSs") that US Minerals provides for its products, including Coal Slag Roofing Granules and Black Magnum Coal Slag Abrasive, and implement NIOSH's recommendations. If NIOSH does not provide this type of consultation, Respondent shall retain a qualified consultant to make recommendations on the adequacy of the MSDSs and implement these recommendations. "Adequacy" in this paragraph means that the MSDSs contain an appropriate description of the health and physical hazards presented by these products, and

appropriate descriptions of generally applicable precautions for safe handling and use and generally applicable control measures, such as appropriate engineering controls, work practices, or personal protective equipment.

B. Training

1. Consultant training program. Respondent agrees to engage a third party consultant, who is qualified by education and training, to develop a training program specifically addressing the following: airborne dust hazards; proper use of personal protective equipment, including respirators and hearing protection; fall hazards; the control of hazardous energy (lockout/tagout requirements ("LOTO")); hazards attendant on entry into permit-required confined spaces; and safe forklift operation. Respondent shall use this program to train employees, and agrees to train its employees within six (6) months of execution of this Agreement. Respondent also agrees to provide this training to new employees before placing the new employee in his or her position. The training program shall also include refresher training provided by the safety manager on an annual basis.

2. Competent Person Training. Respondent shall provide general competent person training to the safety manager and the plant managers within forty-five (45) days of execution of the Agreement or within ninety (90) days after the start of the employee's employment by Respondent. A copy of the curriculum for this training shall be provided to OSHA according to the notice provisions as included herein.

3. Training Augments the Act's Requirements. None of the abatement measures described in this Agreement are intended to change Respondent's obligation to comply with the Act and its regulations. The training which Respondent has agreed to undertake as part of this Agreement and as described herein is not intended to replace any training requirements of the

Act, but rather is intended to supplement and augment the training requirements of the Act.

C. Consultant/auditor - safety programs consultation and compliance audits.

1. Consultant/Auditor's qualifications and responsibilities. Respondent agrees to retain an expert or experts qualified by education, training and experience to consult in developing and revising Respondent's health and safety programs to reduce the risk of occupational injuries, illnesses, and fatalities and to assist Respondent to comply with the terms of this Agreement at Respondent's covered facilities. Hereinafter, the expert will be referred to as the "Consultant/Auditor." This assistance shall include audits of the covered facilities to determine compliance, and shall include air sampling, noise sampling, and any other sampling or testing, which in the independent judgment of the Consultant/Auditor are necessary to determine whether and the extent to which employees may be exposed to health and safety hazards at the covered facilities.

2. Audits. The Consultant/Auditor shall conduct an audit at each covered facility at least once each year during the term of this Agreement to determine whether the covered facilities are complying with the terms of this Agreement.

3. Report of findings and recommendations. For each audit, the Consultant/Auditor will prepare a report of the findings and recommendations.

4. Date response due. Respondent shall review and evaluate each finding within fifteen (15) days and implement feasible recommendations as soon as practical but not later than thirty (30) days after the receipt of the report.

5. Selection procedure. Within forty-five (45) days of the effective date of this Agreement, Respondent shall furnish the name and curriculum vitae of the person or persons whom Respondent proposes to retain. OSHA has fifteen (15) days to object to the selection. If

OSHA objects, Respondent shall continue the search until it locates a person to whom OSHA does not object. That person and/or his or her firm shall be retained by Respondent promptly following expiration of the fifteen (15) day period without objection. This process will not extend the abatement, certification, and document submission dates set forth in this Agreement.

6. Copies of Reports. Copies of the reports prepared by the Consultant/Auditor shall be provided to OSHA pursuant to the notice provisions herein at the same time that the report is provided to Respondent.

7. Statement of Action. Within forty-five (45) days after receipt of a report from the Consultant/Auditor, Respondent will prepare a statement of the action ("Statement of Action") that it intends to take on each recommendation. If Respondent determines not to implement a recommendation, it shall state the reason and describe the actions it is taking or proposes to take to address the matter. Copies of the Statement of Action shall be provided to OSHA pursuant to the notice provisions herein.

VII.

Facility Specific Additional Abatement Measures

A. Noise survey. For the Harvey, Louisiana US Minerals facility, and for any other covered facility where there has been an indication that employees may be exposed above the limits established in the OSHA standards governing noise, Respondent shall retain a qualified third party consultant to conduct a noise survey and make recommendations of engineering and work practice controls to abate these levels. The consultant shall be retained, prepare reports, and provide the reports according to the procedures established above at Paragraph VI.C., above. Respondent shall implement the recommendations within thirty (30) days of receipt of the recommendation.

VIII.

Enforcement under Section 11(b) of the OSH Act

Respondent agrees that the terms of this Agreement shall be enforceable under Section 11(b) of the OSH Act. Respondent agrees that it will not oppose the entry of such an order enforcing this Agreement and the final, amended citations by the U.S. Court of Appeals to which the Secretary of Labor presents this Agreement and supporting documents.

OSHA agrees that if between the Effective Date and the Term of this Agreement it reaches a preliminary determination that Respondent may not be in compliance with this Agreement, OSHA shall notify Respondent by letter directed to the attention of those described in Paragraph XIV entitled Notice and Communications set forth below. Respondent will have fifteen (15) working days from receipt of OSHA's notification to provide a written response. Within twenty (20) days thereafter, the parties will enter into good faith discussions and attempt to resolve the issue. This paragraph is not intended to limit the Secretary's right to use, as appropriate, enforcement methods provided by the Act.

IX.

Failure to Abate

Failure to comply with this Agreement is grounds for notice of failure to abate under Section 10 of the OSH Act.

X.

Inspections

The parties agree that OSHA shall monitor progress and compliance with this Agreement and investigate and verify notification regarding action taken in response to the Consultant/Auditor's recommendations, in accordance with OSHA Directive CPL 2.00.152

(guidelines for administering corporate-wide settlement agreements)

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=4998

. Respondent agrees to require no warrants for entry by OSHA, and to require no subpoenas for access to documents related to compliance with this Agreement or any other matter.

XI.

Costs

Each party agrees to pay its own attorney's fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

XII.

Effective Date and Term of Agreement

This Agreement shall be effective on the date it becomes a final order of the OSHRC and its term shall be two (2) years from the time that this Agreement becomes a final order of the OSHRC.

XIV.

Notice and Communications

All notice and communications shall be to the following persons at the following addresses.

For the Chicago Regional Solicitor's Office:

Allen H. Bean, OSHA Counsel
R. Peter Nessen, Senior Trial Attorney
Office of the Solicitor
230 South Dearborn, Room 844
Chicago, Illinois 60604
Tel: (312) 886-5260
Fax: (312) 353-5698

For Region V OSHA:

Thomas P. Bielema, OSHA Area Director
Peoria Area Office
1320 West Commerce Drive
Peoria, Illinois 61615-1462
Tel: (309) 589-7033
Fax: (309) 589-7326

For the Dallas Regional Solicitor's Office:

Madeleine T. Le, Counsel for Safety and Health
Michael D. Schoen, Senior Trial Attorney
525 S. Griffin Street, Suite 501
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For Region VI OSHA:

Mark R. Briggs, OSHA Area Director
Houston South Area Office
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Fax: (281) 286-6352

Dorinda Folse, OSHA Area Director
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Respondent:

Jason Vukas
Vice President, US Minerals
2105 North Winds Drive
Dyer Indian 46311
Tel: (219) 864-0909
Fax: (219) 864-4675

XV.

Service and Posting

Respondent certifies that there is no authorized employee representative at Respondent's workplace. It is hereby further certified by Respondent that this Settlement Agreement will be served on employees, by posting this agreement by August 17, 2012 in a place where the citation is required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure.

XVI.

No Alteration of Employee Rights

Nothing in this Agreement alters in any manner the rights afforded employees under the OSH Act.

XVII.

The Complainant and the Respondent agree that an order should be entered which:

- a. Amends the Citations and Notification of Penalties, as set forth above.
- b. Allows Respondent to withdraw its Notice of Contest to the Citations and

Notification of Penalties, as amended herein.

Respectfully Submitted,

M. PATRICIA SMITH
Solicitor of Labor

JANET M. GRANNEY
Acting Regional Solicitor

ALLEN H. BEAN
OSHA Counsel

by:

R. PETER NESSEN
Senior Trial Attorney

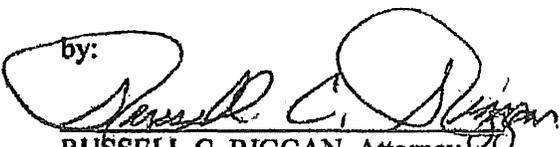
Signed this ___ day of _____, 2012.

U.S. Department of Labor
Office of the Solicitor
230 S. Dearborn Street, Room 844
Chicago, Illinois 60604
Telephone: (312) 353-1216
Facsimile: (312) 353-5698

Attorneys for Complainant

U.S. MINERALS, L.L.C.

by:


RUSSELL C. RIGGAN, Attorney

Riggan Law Firm
132 West Washington Avenue, Suite 100
Kirkwood, Missouri 63122
Telephone: (314) 835-9100
Facsimile: (314) 735-1054

Respectfully Submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

MADELEINE T. LE
Counsel for Occupational Safety & Health

by:


MICHAEL D. SCHOEN
Senior Trial Attorney

Signed this 8 day of August, 2012

U.S. Department of Labor
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Telephone: (972) 850-3100
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Attorneys for Complainant

8/8/12

by:



R. PETER NESSEN
Senior Trial Attorney

Signed this 3rd day of August, 2012.

U.S. Department of Labor
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Attorneys for Complainant

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by:

MICHAEL D. SCHOEN
Senior Trial Attorney

Signed this ___ day of _____, 2012

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Facsimile: (972) 850-3101

Attorneys for Complainant

NOTICE

Any party (including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative) who has any objection to the entry of an order as set forth should communicate such objections within ten (10) days of the posting of this Agreement to Administrative Law Judge, Stephen J. Simko, Jr., 1924 Building, Suite 2R90, 100 Alabama, Atlanta GA 30303-3 104.

A copy should also be sent to:

COMPLAINANT:

OSHA Region VI
Attn: Assistant Regional Administrator, Enforcement
525 S. Griffin St., Suite 602
Dallas, TX 75201

Office of the Dallas Regional Solicitor
Attn: Counsel for Occupational Safety and Health
525 S. Griffin St., Suite 501
Dallas, Texas 75201

OSHA Region V

Attn: Assistant Regional Administrator, Enforcement
230 South Dearborn, Suite 602
Dallas, TX 75201

Office of the Chicago Regional Solicitor
Attn: Counsel for Occupational Safety and Health
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RESPONDENT:

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