

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 86-Z-369

UNITED STATES OF AMERICA and
THE STATE OF COLORADO,

Plaintiffs,

vs.

BRODERICK INVESTMENT COMPANY;
TOM H. CONNOLLY, AS TRUSTEE;
and BURLINGTON NORTHERN RAILROAD
COMPANY,

Defendants and Third-Party Plaintiffs,

vs.

COLORADO NATIONAL BANK OF DENVER,
N.A., and FIRST INTERSTATE BANK
OF DENVER, N.A.,

Third-Party Defendants.

STIPULATION AND MODIFICATION OF CONSENT DECREE

I. BACKGROUND

WHEREAS, Plaintiffs United States of America (“United States”) and the State of Colorado (“State”), and Defendants Broderick Investment Company (“BIC”) and Tom H. Connolly, as Trustee of those certain trusts listed on appendix D to the Consent Decree (the “Trusts”), previously entered into a Consent Decree that was approved and entered by this Court on June 26, 1995 (the “Decree”).

WHEREAS, the Decree requires, among other things, that BIC finance and perform the environmental cleanup of the Broderick Wood Products Superfund Site in Adams County,

Colorado (the "Site"), and that BIC and the Trusts (collectively the "Owner Settling Defendants") maintain minimum levels of assets over specified periods to provide financial security for the performance of such work.

WHEREAS, the United States, the State, and the Owner Settling Defendants (the "Parties") now agree that: (a) the provisions of Paragraph 44 of the Decree regarding the maintenance of minimum levels assets for financial security need to be modified so that the Owner Settling Defendants can continue to fund the environmental cleanup and perform other obligations under the Decree; and (b) BIC may not have sufficient funds to complete the environmental cleanup of the Site.

WHEREAS, the Parties agree that it is in their mutual best interest that BIC continue to finance and perform the environmental cleanup of the Site for as long as possible, and the changes to the Decree proposed herein are to further that purpose.

WHEREAS, Paragraph 52 of the Decree requires the Owner Settling Defendants to reimburse the United States for all its "Future Response Costs" as defined in the Decree, provided that the Owner Settling Defendants may contest payment as provided in Paragraph 53 of the Decree and deposit all contested future response costs in an interest bearing escrow account pending resolution of the dispute.

WHEREAS, BIC paid all Future Response Costs billed to it by EPA from the effective date of the Decree through the date of this Stipulation and Modification of Decree other than those Future Response Costs billed for years 2002, 2003, and 2004 as to which BIC timely interposed objections and deposited the disputed amount of \$810,187.00 (the "Disputed Oversight Costs") in an interest bearing escrow account (the "Disputed Cost Fund").

THEREFORE, the Parties stipulate and agree as follows:

1. Subject to the terms and conditions of this Stipulation and Modification of Decree, the Disputed Cost Fund with all interest accrued thereon shall be released and returned to BIC.

2. Subject to the provisions of Paragraphs 5 and 6 below, EPA will suspend and not bill the Owner Settling Defendants for Future Response Costs, incurred commencing January 1, 2006.

3. All of the assets and revenues of BIC shall be maintained and used solely by BIC to fund the future performance of the Remedial Action and Operation and Maintenance Activities (as defined in the Decree – referred to hereinafter as the “Remaining Work”) at the Site, and the ordinary, necessary, and commercially reasonable cost of the operations of BIC. BIC’s assets as of the date of this Stipulation and Modification of Decree are listed on Appendix A. In addition, all of the Disputed Oversight Costs and accrued interest returned to BIC shall be included in BIC’s assets and used as provided herein. As used herein the costs for performing the Remaining Work and funding of BIC’s ordinary, necessary, and commercially reasonable costs of operation include, but are not necessarily limited to, direct costs of performing the Remaining Work, the normal legal, accounting and administrative costs of operating and maintaining BIC, and the legal and other professional costs incurred in connection with the performance of Work under the Decree including any dispute resolution matters, the costs for management of BIC, costs of maintaining all risk insurance on BIC assets and operations, costs to be incurred in the sale or other disposition of BIC property, and taxes fees and charges imposed upon BIC. So long as this Stipulation and Modification of Decree is in force, no distributions of BIC property or assets shall be made to the Trusts or Trust Beneficiaries, provided, however, that it is recognized that BIC is a pass through entity for federal and state

income tax purposes and that BIC will realize taxable gain from certain assets listed on Appendix A. BIC shall have the authority to distribute to the Trusts only funds sufficient to pay the taxes imposed as a result of sales by BIC of its assets. Paragraph 44 of the Decree is hereby modified by the terms of this paragraph such that compliance with the requirements of this paragraph shall constitute the establishment and maintenance of financial security to provide assurance of ability to complete the Work as required by the Decree. Owner Settling Defendants shall have no other or further obligations under Paragraph 44 of the Decree.

4. BIC shall submit annual calendar year financial reports to the United States, EPA, and the State (as provided by Paragraph 99 of the Decree) by March 30 of the following year providing (i) a financial accounting of BIC's income, expenses, and distributions during such calendar year, (ii) financial projections of the cost of performing all Remaining Work and maintaining BIC reduced to a net present value, (iii) the net present value of all BIC's assets; and (iv) such other information necessary to determine whether BIC has complied with the terms of this Stipulation and Modification of Decree and to evaluate BIC's ability to perform all Remaining Work.

5. If at any time after the date of this Stipulation and Modification of Decree EPA reasonably determines that the net present value of BIC's then remaining assets exceeds the amount necessary to maintain BIC and all Remaining Work in perpetuity (such excess amount, the "Overage"), as reduced to a net present value, BIC shall pay to EPA 50% of the amount of the Disputed Oversight Costs plus accrued interest thereon, or, if less, the amount of the Overage. If after the payment of 50% of the Disputed Oversight Costs and accrued interest thereon an Overage still exists, EPA may resume billing BIC for the reimbursement of the Future Response Costs incurred after December 31, 2005, and BIC shall be obligated to pay such Future

Response Costs as provided by the terms of the Decree, including BIC's right to contest payment as provided by Paragraph 53 of the Decree.

6. Interest on amounts payable to the United States as provided by this Stipulation and Modification of Decree shall accrue at the rate established pursuant to Section 107 (a) of CERCLA, 42 U.S.C. 9607(a), and shall accrue from the following dates: (a) with respect to Disputed Oversight Costs, the date of the distribution to BIC from the Disputed Cost Fund; and (b) with respect to Future Response Costs, the date such costs are billed to BIC.

7. This Stipulation and Modification of Decree shall become effective on the date approved by the Court.

FOR THE UNITED STATES OF AMERICA

U.S. DEPARTMENT OF JUSTICE

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date 9/3/08

JERRY ("JERRY") L. ELLINGTON
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294

Date 9/8/2008

**UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF COLORADO**

TROY A. EID
United States Attorney

STEPHEN D. TAYLOR *ST* *Permission*
Assistant United States Attorney
District of Colorado
1225 Seventeenth Street, Suite 700
Denver, CO 80202

SEP. 15 2008
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8

By: _____
BILL MURRAY, Director
Superfund Remedial Response Program
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

6/10/08
Date

By: _____
MATTHEW D. COHN, Supervisor
Legal Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8

6/19/08
Date

By: _____
SHARON L. KERCHER, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8

17 June 2008
Date

FOR THE STATE OF COLORADO

JOHN W. SUTHERS
Attorney General

9/2/08
Date

ROBERT J EBER
Senior Assistant Attorney General
Hazardous and Solid Waste Unit
Natural Resources and Environment Section
1525 Sherman Street, 7th Floor
Denver, CO 80203

9/2/08
Date

JAMES B. MARTIN
Executive Director
Colorado Department of Public Health & Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

**FOR BRODERICK INVESTMENT COMPANY
AND THE BRODERICK TRUSTS**

BRODERICK INVESTMENT COMPANY
By BIC, Inc., Its General Partner

TOM H. CONNOLLY, President
390 Interlocken Crescent Street
Broomfield, CO 80021

5/29/08
Date

FOR THOSE TRUSTS LISTED IN
APPENDIX D TO THE DECREE

TOM H. CONNOLLY
Trustee
390 Interlocken Crescent Street
Broomfield, CO 80021

5/29/08
Date

Appendix A

Appendix A
BIC Assets
As of April 25, 2008

1. Scott Contracting secured promissory note of January 2007 in the principal amount of \$2,393,589.33 and all proceeds thereof.
2. The real property comprising the Broderick Superfund Site less that portion thereof sold to Scott Contracting in January of 2007 which now serves as security for the promissory note described in item 1 above including that portion north of the UP railroad on which is situated the water treatment plant.
3. Inventory, equipment and supplies owned by BIC and located on the Broderick superfund site and used in the performance of the remedy as now owned or hereafter acquired consisting as of the date hereof of:
 - One John Deere 5500 tractor with attachments;
 - One 1996 Ford F-150 PU;
 - One 40 ft single wide de-con office trailer;
 - One portable Kaeser 175 cfm rotary screw air compressor;
 - One 2004 Lande high pressure/high temperature steam cleaner;
 - Misc. laboratory, testing equipment, pumps and hand tools.
4. Funds held in the BIC operating account as of the date hereof of approximately \$5,000.