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2
3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

5 _____ :
6 :
7 **UNITED STATES OF AMERICA** :

8 :
9 :
10 **Plaintiff,** :

11 **Civil Action No. CV-86-1591**

12 **v.** :

13 :
14 **CITY OF SCRANTON** :

15 :
16 **Defendant.** :
17 _____ :

18
19 **CONSENT DECREE**

20 **I. BACKGROUND**

21 A. The United States of America (“United States”), on behalf of the Administrator of the
22 United States Environmental Protection Agency (“EPA”), filed a complaint in this matter on
23 November 10, 1986, pursuant to sections 104, 106, and 107 of the Comprehensive
24 Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9604,
25 9606 and 9607 against the City of Scranton and several other defendants.

26 B. The United States in its complaint sought, inter alia: (1) injunctive and other equitable
27 relief to address contamination that presents or may present an imminent and substantial

1 endangerment to human health or welfare and the environment; (2) reimbursement of response
2 costs incurred or to be incurred by the United States in response to a release or threat of release
3 of hazardous substances from the Taylor Borough Site in Lackawanna County, Pennsylvania
4 (“Site”); and (3) a declaratory judgment, under Section 113(g)(2) of CERCLA, as amended, 42
5 U.S.C. § 9613(g)(2), and U.S.C. § 2201, as to liability for future response costs.

6 C. On November 30, 1995, this Court granted the United States’ motion for summary
7 judgment for response costs against the City of Scranton, as well as other defendants, in the
8 amount of \$1,838,579.70 plus Interest.

9 D. The Parties agree, and the Court by entering this Consent Decree finds, that this Consent
10 Decree has been negotiated by the Parties in good faith and implementation of this Consent
11 Decree will expedite the cleanup of the Site and resolve the United States’ outstanding judgment
12 against the City of Scranton, Pennsylvania, and that this Consent Decree is fair, reasonable, and in
13 the public interest.

14 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

15 **II. JURISDICTION**

16 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
17 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal
18 jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the
19 underlying complaint, Settling Defendant waives all objections and defenses that it may have to
20 jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the
21 terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2 2. This Consent Decree shall apply to and be binding upon the United States and upon
3 Settling Defendant and its officials, employers, agents and assigns. Any change in legal status of
4 Settling Defendant shall in no way alter the status or responsibilities of Settling Defendant under
5 this Consent Decree.

6 3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to
7 perform the Work (as defined below) required by this Consent Decree and to each person
8 representing Settling Defendant with respect to the Site or the Work and shall condition all
9 contracts entered into hereunder upon performance of the Work in conformity with the terms of
10 this Consent Decree. Settling Defendant or its contractors shall provide written notice of the
11 Consent Decree to all subcontractors hired to perform any portion of the Work required by this
12 Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its
13 contractors and subcontractors perform the Work contemplated herein in accordance with this
14 Consent Decree.

IV. DEFINITIONS

15
16 4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are
17 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning
18 assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in
19 this Consent Decree or in the appendices attached hereto and incorporated hereunder, the
20 following definitions shall apply:

21 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and

Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

2 “Consent Decree” shall mean this Decree and all appendices attached hereto (listed in
3 Section XXVI). In the event of conflict between this Decree and any appendix, this Decree shall
4 control.

5 “Contractor” shall mean the company or companies selected by the Settling Defendant to
6 undertake and complete the Work (as hereinafter defined). Each contractor and any subcontractor
7 retained by Contractor shall be deemed to be related by contract to the Settling Defendant within
8 the meaning of 42 U.S.C. § 9607(b)(3) and to be acting on behalf of, and as an agent for Settling
9 Defendant.

10 “Day” shall mean a calendar day unless expressly stated to be a working day. “Working
11 day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period
12 of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or
13 Federal holiday, the period shall run until the close of business of the next working day.

14 “Duly Authorized Representative” shall mean a person set forth or designated in accordance
15 with the procedures set forth in 40 C.F.R. § 270.11(b).

16 “Effective date” shall be the effective date of this Consent Decree as provided in Section
17 XXIV of this Consent Decree.

18 “EPA” shall mean the United States Environmental Protection Agency and any successor
19 departments or agencies of the United States.

20 “Future Response Costs” shall mean all costs, including, but not limited to, direct and
21 indirect costs, that the United States incurs in reviewing or developing plans, reports and other

1 items pursuant to this Consent Decree, verifying the Work, or otherwise implementing,
2 overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs,
3 contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VII (Remedy
4 Review), Section IX (Access and Institutional Controls) (including, but not limited to, the cost of
5 attorney time and any monies paid to secure access and/or to secure or implement institutional
6 controls including, but not limited to, the amount of just compensation), Section XV (Payments of
7 Response Costs), and Paragraph 72 (Work Takeover).

8 “Interest” shall mean interest at the rate specified for interest on investments of the
9 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
10 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest
11 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change
12 on October 1 of each year.

13 “Municipal Sewage Sludge” shall mean any solid, semi-solid, or liquid residue removed
14 during the treatment of municipal waste water or domestic sewage, and may include residue
15 removed, all or in part, during the treatment of wastewater from manufacturing or processing
16 operations, provided that such residue has essentially the same characteristics as residue removed
17 during the treatment of domestic sewage.

18 “Municipal Solid Waste” shall mean household waste and solid waste collected from
19 non-residential sources that is essentially the same as household waste. While the composition of
20 such wastes may vary considerably, municipal solid waste generally is composed of large volumes
21 of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain

small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

2 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous
3 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42
4 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

5 “Operation and Maintenance” or “O & M” shall mean all activities required to maintain the
6 effectiveness of the Remedial Action as required under the Operation and Maintenance Plan
7 which has been developed by EPA (“Operation and Maintenance Plan”) pursuant to this Consent
8 Decree. The Operation and Maintenance Plan is attached as Appendix B.

9 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or
10 an upper case letter.

11 “Parties” shall mean the United States (including EPA) and the Settling Defendant.

12 “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect
13 costs, that the United States has paid at or in connection with the Site through July 2, 2007 and
14 which are identified in the summary of costs attached hereto as Appendix C, plus Interest on all
15 such costs which has accrued pursuant to 42 U.S.C. § 9607(a).

16 “Plaintiff” shall mean the United States.

17 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.
18 (also known as the Resource Conservation and Recovery Act).

19 “Records of Decision” or “RODs” shall collectively mean the EPA Records of Decision
20 relating to the Site signed respectively on June 28, 1985 (“1985 ROD”) and March 17, 1986
21 (“1986 ROD”), by the Regional Administrator, EPA Region III, or his delegate, and all

1 attachments thereto. The 1985 ROD is attached as Appendix A-1 and the 1986 ROD is attached
2 as Appendix A-2.

3 “Remedial Action” shall mean those activities, undertaken to implement the RODs .

4 “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

5 “Settlement Amount” shall mean the amount the Settling Defendant is required to pay
6 pursuant to Paragraph 38 (Payments for Past Response Costs) of this Consent Decree.

7 “Settling Defendant” shall mean the City of Scranton .

8 “Site” or “Taylor Borough Site” shall mean the “facility,” as that term is defined in Section
9 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 300.6, consisting of approximately 125
10 acres, located at Prince Street in Taylor Borough, Lackawanna County, Pennsylvania (41°43'02"
11 North Latitude and 73°42'02" West Longitude) and depicted in the RODs for the Site.

12 “Supervising Contractor” shall mean the principal contractor retained by the Settling
13 Defendant to supervise and direct the implementation of the Work under this Consent Decree.

14 “Taylor Borough Dump Superfund Site Special Account” shall mean the special account
15 established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

16 “United States” shall mean the United States of America.

17 “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of
18 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42
19 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C.
20 § 6903(27); and (4) any “hazardous substance” under Section 103 of the Pennsylvania Hazardous

Sites Cleanup Act, 35 P.S. § 6020.103.

“Work” shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The purposes of this Consent Decree and the intent of the Parties are to: (A) protect the public health and welfare and the environment from hazardous conditions which may be present by any release or threatened release of Waste Materials at and from the Site; and (B) resolve the United States’ outstanding judgment for the reimbursement of past costs against Settling Defendant through Settling Defendant’s payment of \$250,000 plus Interest and agreement to take over responsibility for any Operation and Maintenance at the Site.

6. Commitments by Settling Defendant

a. Settling Defendant shall finance and perform the remaining Work at the Site in accordance with this Consent Decree, the RODs, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA.

b. Settling Defendant shall also reimburse the United States for Past Response Costs in the amount of \$250,000 plus Interest as set forth in Paragraph 38 (Payments for Past Response Costs).

c. In the event that the Settling Defendant files for bankruptcy or is placed involuntarily in bankruptcy proceedings, Settling Defendant shall notify the United States within

three (3) days of such filing.

2 7. Compliance With Applicable Law

3 All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be
4 performed in accordance with the requirements of all applicable federal and state laws and
5 regulations. Settling Defendant must also comply with all applicable or relevant and appropriate
6 requirements of all Federal and state environmental laws as set forth in the RODs. The activities
7 conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be
8 consistent with the NCP.

9 8. Permits

10 a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP,
11 no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the
12 areal extent of contamination or in very close proximity to the contamination and necessary for
13 implementation of the Work). Where any portion of the Work that is not on-site requires a federal
14 or state permit or approval, Settling Defendant shall submit timely and complete applications and
15 take all other actions necessary to obtain all such permits or approvals.

16 b. The Settling Defendant may seek relief under the provisions of Section XV (Force
17 Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a
18 failure to obtain, or a delay in obtaining, any permit required for the Work.

19 c. This Consent Decree is not, and shall not be construed to be, a permit issued
20 pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

2 9. Selection of Contractors.

3 a. Supervising Contractor.

4 (1) All aspects of the Work to be performed by Settling Defendant pursuant
5 to Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), and XII
6 (Emergency Response) of this Consent Decree shall be under the direction and supervision of the
7 Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by
8 EPA. Within ten (10) days after the lodging of this Consent Decree, Settling Defendant shall
9 notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the
10 Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor,
11 Settling Defendant shall demonstrate that the proposed contractor has the qualifications to review
12 documents as outlined in ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality
13 Systems for Environmental Data Collection and Environmental Technology Programs,"
14 (American National Standard, January 5, 1995). EPA will issue a notice of disapproval or
15 acceptance of the selection of such Supervising Contractor. If at any time thereafter, Settling
16 Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice
17 to EPA and must obtain a notice of acceptance of such change from EPA, before the new
18 Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

19 (2) If EPA disapproves the selection of a proposed Supervising Contractor,
20 EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of at
21 least three contractors, including the qualifications of each contractor, that would be acceptable to

1 them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the
2 names of any contractor(s) whose selection it would accept. Settling Defendant may select any
3 contractor from that list and shall notify EPA of the name of the contractor selected within
4 twenty-one (21) days of EPA's written notice.

5 (3) If EPA fails to provide written notice of its acceptance or disapproval as
6 provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or
7 more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling
8 Defendant may seek relief under the provisions of Section XV (Force Majeure) of this Consent
9 Decree.

10 b. Other Contractors and Subcontractors.

11 (1) The Settling Defendant shall submit to EPA for acceptance by EPA the
12 names and qualifications of any additional contractors and subcontractors it proposes to use to
13 satisfy any requirement of this Consent Decree before such contractor or subcontractor performs
14 any Work. If EPA does not respond with a notice accepting or disapproving the proposal for
15 additional contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling
16 Defendant's selections, the proposal for additional contractors and subcontractors shall be deemed
17 accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling
18 Defendant shall submit to EPA a list of at least three contractors or subcontractors, including the
19 qualifications of each, that would be acceptable to it within ten (10) days of receipt of EPA's
20 notice. EPA will provide written notice of the names of any contractor(s) or subcontractor(s)
21 whose selection it would accept. Settling Defendant may select any contractor or subcontractor
22 from that list and shall notify EPA of the name of the contractor or subcontractor selected within

five (5) days of EPA's written notice.

2 10. Operation and Maintenance

3 a. Settling Defendant shall perform Operation and Maintenance at the Site in
4 accordance with the requirements of CERCLA, the NCP, this Consent Decree (including the
5 Operation and Maintenance Plan and a work plan for O & M approved by EPA in accordance
6 with Paragraph 10(b) of this Consent Decree), and relevant EPA guidance documents.

7 b. Within ten (10) days after Settling Defendant receives notice of contractor
8 selection acceptance by EPA pursuant to Paragraph 9 of this Consent Decree or, if EPA has
9 provided notice of contractor selection acceptance prior to lodging this Consent Decree, within ten
10 (10) days after lodging this Consent Decree, whichever is earlier, Settling Defendant shall
11 commence performance of the activities identified in Appendix B (Operation and Maintenance
12 Plan) to this Consent Decree and shall continue to perform such actions pursuant to Paragraph
13 10(e) of this Consent Decree.

14 c. Within 30 days after EPA's acceptance of the selection of the Supervising
15 Contractor pursuant to Paragraph 9, Settling Defendant shall submit to EPA a work plan for
16 conducting the activities outlined in the Operation and Maintenance Plan for the Site ("O & M
17 Work Plan"). The O & M Work Plan shall provide for the achievement of the requirements set
18 forth in the Operation and Maintenance Plan and this Consent Decree. Upon its approval by EPA,
19 the O & M Work Plan shall be incorporated into and become enforceable under this Consent
20 Decree. The Settling Defendant shall also submit to EPA, at the time the O & M Work Plan is
21 submitted, a Health and Safety Plan for field activities which conforms to the applicable

Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

d. The O & M Work Plan shall provide for implementation of the Operation and Maintenance Plan; shall include plans, schedules, and methodologies for implementation of all O & M tasks, and shall include, at a minimum:

(1) Maintenance of the fence, locks and signs. This may include cutting undesirable species which could impact the integrity of the fence, replacing rusted locks, and fixing any broken parts of the fence.

(2) Cleanup of drainage structure areas.

(3) Fixing any damage to drainage structures, as needed.

(4) Mowing grass inside fenced areas.

(5) Re-seeding fenced-in areas, as needed.

(6) Re-filling settled areas which could create ponded areas and impact the integrity of the cap.

e. Upon approval of the O & M Work Plan by EPA and submittal of the Health and Safety Plan for all field activities to EPA, Settling Defendant shall implement the O & M Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendant shall submit to EPA all plans, submittals, and other deliverables required under the approved O & M Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA or required under the O & M Work Plan, Settling Defendant shall not

commence field activities at the Site prior to approval of the O & M Work Plan.

2 f. (1) Minor Repairs. Settling Defendant shall conduct any minor repairs
3 necessary to maintain the effectiveness of the Remedial Action and shall document such minor
4 repairs in the quarterly progress reports prepared in accordance with Section IX (Reporting
5 Requirements) of this Consent Decree. As used in this Paragraph, minor repairs shall include, but
6 not be limited to, repair or replacement of locks; fence segments; signs; and the cover soil, topsoil,
7 and vegetation layers of the cap. Should erosion of cover soil result in exposure that could
8 damage the integrity of the cap, Settling Defendant shall notify EPA as soon as practicable
9 following discovery of such condition and shall assess the need for major repairs as defined in
10 Paragraph 10(f)(2).

11 (2) Major Repairs. Settling Defendant shall orally notify EPA as soon as
12 practicable following discovery of any event or condition which requires major repairs to any
13 component of the Remedial Action. As used in this Paragraph, major repairs shall include, but
14 not be limited to, repair or replacement of eroded areas of the cap, damage to drainage systems, or
15 subsidence of the capped area. Within thirty (30) days following any such discovery, Settling
16 Defendant shall submit to EPA for approval a work plan describing the methods and schedules for
17 conducting such major repairs necessary to maintain the effectiveness of the Remedial Action.
18 Upon approval by EPA, the work plan shall be enforceable under this Consent Decree. Following
19 such approval by EPA, Settling Defendant shall implement the work plan in accordance with the
20 schedules and methodologies contained therein.

21 g. The Settling Defendant shall continue to implement the O & M at the Site in
22 perpetuity.

11. Modification of the Work.

2 a. If EPA determines that modification of the Work is necessary to carry out and
3 maintain the effectiveness of the remedies set forth in the RODs, EPA may require that such
4 modification be incorporated into the Operation and Maintenance Plan and/or any other plan
5 relating to such Work.

6 b. If Settling Defendant objects to any modification determined by EPA to be
7 necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XVI
8 (Dispute Resolution), Paragraph 54 (Record Review). The Operation and Maintenance Plan
9 and/or related work plans shall be modified in accordance with final resolution of the dispute.

10 c. Settling Defendant shall implement any work required by any modifications
11 incorporated in the Operation and Maintenance Plan and/or in work plans developed in
12 accordance with this Paragraph.

13 d. Nothing in this Paragraph shall be construed to limit EPA's authority to require
14 performance of further response actions as otherwise provided in this Consent Decree.

15 **VII. REMEDY REVIEW**

16 12. Periodic Review. Settling Defendant shall conduct any studies and investigations as
17 requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is
18 protective of human health and the environment, at least every five (5) years as required by
19 Section 121(c) of CERCLA and any applicable regulations.

20 13. EPA Selection of Further Response Actions. If EPA determines, at any time, that the
21 Remedial Action is not protective of human health and the environment, EPA may select further

response actions for the Site in accordance with the requirements of CERCLA and the NCP.

2 14. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or
3 117 of CERCLA, the public will be provided with an opportunity to comment on any further
4 response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c)
5 of CERCLA and to submit written comments for the record during the comment period.

6 15. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects
7 further response actions for the Site, the Settling Defendant shall undertake such further response
8 actions to the extent that the reopener conditions in Paragraph 69 (United States' reservations of
9 liability based on unknown conditions or new information) are satisfied. If EPA requires Settling
10 Defendant to undertake such further actions pursuant to this Paragraph, Settling Defendant may
11 invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute (1) EPA's
12 determination that the reopener conditions of Paragraph 69 of Section XVIII (Covenant Not to
13 Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective
14 of human health and the environment, or (3) EPA's selection of the further response actions.
15 Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further
16 response actions shall be resolved pursuant to Paragraph 54 (Record Review).

17 16. Submissions of Plans. If Settling Defendant is required to perform the further response
18 actions pursuant to Paragraph 15, it shall submit a plan for such work to EPA for approval in
19 accordance with the procedures set forth in Section VI (Performance of the Work by Settling
20 Defendant) and shall implement the plan approved by EPA in accordance with the provisions of
21 this Decree.

VIII. ACCESS AND INSTITUTIONAL CONTROLS

2 17. If the Site, or any other property where access and/or land/water use restrictions are
3 needed to implement this Consent Decree, is owned or controlled by persons other than the
4 Settling Defendant, Settling Defendant shall use best efforts to secure from such persons:

5 a. an agreement to provide access thereto for Settling Defendant, as well as for the
6 United States on behalf of EPA, as well as its representatives (including contractors), for the
7 purpose of conducting any activity related to this Consent Decree including, but not limited to, the
8 following activities:

9 (1) Monitoring the Work;

10 (2) Verifying any data or information submitted to the United States;

11 (3) Conducting investigations relating to contamination at or near the Site;

12 (4) Obtaining samples;

13 (5) Assessing the need for, planning, or implementing additional response
14 actions at or near the Site;

15 (6) Implementing the Work pursuant to the conditions set forth in
16 Paragraph 72 (Work Takeover);

17 (7) Inspecting and copying records, operating logs, contracts, or other
18 documents maintained or generated by Settling Defendant or its agents, consistent
19 with Section XXII (Retention of Records);

20 (8) Assessing Settling Defendant's compliance with this Consent Decree; and

(9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. an agreement, enforceable by the Settling Defendant and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures performed at this Site. Such restrictions include, but are not limited to, the following activities:

(1) Shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedy;

(2) With respect to the capped area on the Site, except as pre-approved by EPA, Settling Defendant shall not:

(i) construct, create, erect, or move onto the land, or permit the construction, creation, erection, or movement onto the land, any building, structure or trailer;

(ii) construct, develop, or maintain, or permit the construction, development, or maintenance across the land of any subsurface utility lines;

(iii) place or permit placement of any subsurface storage tanks under the land; and

(iv) disturb the surface of the land by filling, drilling, excavation, removal of rock, or minerals, or otherwise changing the topography of the land in any manner;

2 (3) No vehicle that may endanger the integrity of the cap may be parked,
3 driven, or caused to be driven or parked on the cap. No object of any kind which
4 could damage the integrity of the cap shall be placed or caused to be placed on the
5 cap;

6 (4) No Hazardous Substances or Waste Material shall be deposited, stored,
7 dumped or buried on the Site;

8 (5) There shall be no installation or use of new groundwater wells or use of
9 any existing groundwater wells on the Site;

10 (6) No human consumption of contaminated groundwater shall be allowed at
11 or on the Site. Drinking water supply wells shall not be installed on the Site;

12 (7) There shall be no activities that obstruct or damage the drainage structures
13 conveying surface waters from the fenced areas of the Site; and

14 (8) No new development at the Site shall be conducted or implemented that
15 EPA determines will adversely affect the integrity of the cap.

16 c. the execution and recordation in the Recorder's of Deeds for Lackawanna County,
17 Commonwealth of Pennsylvania, of an easement, running with the land, that (i) grants a right of
18 access for the purpose of conducting any activity related to this Consent Decree including, but not
19 limited to, those activities listed in Paragraph 17(a) of this Consent Decree, and (ii) grants the
20 right to enforce the land/water use restrictions listed in Paragraph 17(b) of this Consent Decree, or
21 other restrictions that EPA determines are necessary to implement, ensure non-interference with,
or ensure the protectiveness of the remedial measures performed at this Site. The access rights

and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the Settling Defendant and its representatives, and/or (iii) other appropriate grantees. Within forty-five (45) days of entry of this Consent Decree, Settling Defendant shall submit to EPA for review and approval with respect to such property:

(1) a draft easement, in substantially the form attached hereto as Appendix D, that is enforceable under the laws of the Commonwealth of Pennsylvania; and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder of Deeds for Lackawanna County. Within thirty (30) days of recording the easement, such Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

18. For purposes of Paragraph 17 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water

use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 17(a) or 17(b) of this Consent Decree are not obtained within forty-five (45) days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 17(c) of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of the date of entry of this Consent Decree, or (c) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 17(c)(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within forty-five (45) days of the date of entry of this Consent Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 17 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XIII (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

19. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference

therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

20. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. REPORTING REQUIREMENTS

21. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA two (2) copies each of written quarterly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (c) describe all actions, including, but not limited to, implementation of work plans, which are scheduled for the next quarter and provide other information relating to the progress of Work; (d) include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and (e) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA. Settling Defendant shall submit these progress reports to EPA by the tenth day after the end of each quarter following the lodging of this Consent Decree. If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

22. The Settling Defendant shall notify EPA of any change in the schedule described in the
2 monthly progress report for the performance of any activity, including, but not limited to,
3 implementation of work plans, no later than seven (7) days prior to the performance of the
4 activity.

5 23. Upon the occurrence of any event during performance of the Work that Settling
6 Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the
7 Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendant shall
8 within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator
9 or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project
10 Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project
11 Coordinator is available, the EPA Region III Hotline at (215) 814-3255. These reporting
12 requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

13 24. Within twenty (20) days of the onset of such an event, Settling Defendant shall furnish
14 to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth
15 the events which occurred and the measures taken, and to be taken, in response thereto. Within
16 thirty (30) days of the conclusion of such an event, Settling Defendant shall submit a report setting
17 forth all actions taken in response thereto.

18 25. Settling Defendant shall submit two (2) copies of all plans, reports, and data required by
19 the Operation and Maintenance Plan, or any other approved plans to EPA in accordance with the
20 schedules set forth in such plans.

21 26. All reports and other documents submitted by Settling Defendant to EPA (other than the

quarterly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Defendant.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

27. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modifies the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within fourteen (14) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

28. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 27(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 27(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties).

29. a. Upon receipt of a notice of disapproval pursuant to Paragraph 27(d), Settling
2 Defendant shall, within fourteen (14) days, or such other time as specified by EPA in such notice,
3 correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated
4 penalties applicable to the submission, as provided in Section XVII (Stipulated Penalties), shall
5 accrue during the fourteen (14)-day period, or otherwise specified period, but shall not be payable
6 unless the resubmission is disapproved or modified due to a material defect as provided in
7 Paragraphs 30 and 31.

8 b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph
9 27(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by
10 any non-deficient portion of the submission. Implementation of any non-deficient portion of a
11 submission shall not relieve Settling Defendant of any liability for stipulated penalties under
12 Section XVII (Stipulated Penalties).

13 30. In the event that a resubmitted plan, report or other item, or portion thereof, is
14 disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in
15 accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the
16 plan, report or other item. Settling Defendant shall implement any such plan, report, or item as
17 modified or developed by EPA, subject only to its right to invoke the procedures set forth in
18 Section XVI (Dispute Resolution).

19 31. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a
20 material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or
21 item timely and adequately unless the Settling Defendant invokes the dispute resolution
22 procedures set forth in Section XVI (Dispute Resolution) and EPA's action is overturned pursuant

to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVII (Stipulated Penalties).

32. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XI. PROJECT COORDINATORS

33. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:
Maria de los A. Garcia (3HS21)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 215-814-3199 (phone)
(215) 814-3002 (telefax)

EPA Alternate Project Coordinator:
Peter Ludzia (3HS21)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3224 (phone)
(215) 814-3002 (telefax)

1 Within twenty (20) days of lodging this Consent Decree, Settling Defendant will notify EPA, in
2 writing, of the name, address and telephone number of its designated Project Coordinator and
3 Alternate Project Coordinator. If a Project Coordinator or Alternate Project Coordinator initially
4 designated is changed, the identity of the successor will be given to the other Parties at least five
5 (5) working days before the changes occur, unless impracticable, but in no event later than the
6 actual day the change is made. The Settling Defendant's Project Coordinator and Alternate
7 Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the
8 technical expertise sufficient to adequately oversee all aspects of the Work. The Settling
9 Defendant's Project Coordinator and Alternate Project Coordinator shall not be an attorney for the
10 Settling Defendant in this matter. The Settling Defendant's Project Coordinator and Alternate
11 Project Coordinator may assign other representatives, including other contractors, to serve as a
12 Site representative for oversight of performance of daily operations during remedial activities.

13 34. Plaintiff may designate other representatives, including, but not limited to, EPA
14 employees, and federal contractors and consultants, to observe and monitor the progress of any
15 activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate
16 Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager
17 (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part
18 300. In addition, EPA's Project Coordinator and Alternate Project Coordinator shall have
19 authority, consistent with the National Contingency Plan, to halt any Work required by this
20 Consent Decree and to take any necessary response action when s/he determines that conditions at
21 the Site constitute an emergency situation or may present an immediate threat to public health or
22 welfare or the environment due to release or threatened release of Waste Material.

35. EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet,
at a minimum, twice yearly.

XII. EMERGENCY RESPONSE

36. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 37, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Region III Hotline at (215) 814-3255. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Payments for Response Costs).

37. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to (a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize

an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XVIII
(Covenant Not to Sue by Plaintiff).

XIII. PAYMENTS FOR RESPONSE COSTS

38. Payments for Past Response Costs. Settling Defendant commits to pay to the United States \$250,000 plus Interest in payment for Past Response Costs. This payment shall be made in five installments as follows.

a. Within 30 days of the Effective Date of this Consent Decree, Settling Defendant shall pay to EPA \$ 50,000.00.

b. Within one year of the Effective Date of this Consent Decree, Settling Defendant shall pay to EPA an additional \$ 50,000.00 plus Interest on the remaining balance.

c. Within two years of the Effective Date of this Consent Decree, Settling Defendant shall pay to EPA an additional \$ 50,000.00 plus Interest on the remaining balance.

d. Within three years of the Effective Date of this Consent Decree, Settling Defendant shall pay to EPA an additional \$ 50,000.00 plus Interest on the remaining balance.

e. Within four years of the Effective Date of this Consent Decree, Settling Defendant shall pay to EPA an additional \$ 50,000.00 plus Interest on the remaining balance.

f. If any payment identified in Paragraphs 38(a-e) is not paid timely, the remaining payments plus all accrued Interest on the remaining balance will be due immediately.

39. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO

File Number 2004Z00386, EPA Site/Spill ID No. 0361, and DOJ Case Number 90-11-3-4311.

2 Payment shall be made in accordance with instructions provided to the Settling Defendant by the
3 Financial Litigation Unit of the United States Attorney's Office for the Middle District of
4 Pennsylvania following lodging of the Consent Decree. Any payments received by the
5 Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.
6 Settling Defendant shall send notice that such payment has been made to the United States as
7 specified in Section XXIII (Notices and Submissions) and to the Docket Clerk (3RC00), United
8 States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

9 40. The total amount to be paid by Settling Defendant pursuant to Paragraph 39 shall be
10 deposited in the Taylor Borough Superfund Site Special Account within the EPA Hazardous
11 Substance Superfund to be retained and used to conduct or finance response actions at or in
12 connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

13 41. Payments for Future Response Costs. Settling Defendant shall pay to EPA all Future
14 Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the
15 United States will send Settling Defendant a bill requiring payment that includes a cost summary,
16 setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling
17 Defendant shall make all payments within thirty (30) days of Settling Defendant's receipt of each
18 bill requiring payment, except as otherwise provided in Paragraph 42. Settling Defendant shall
19 make all payments required by this Paragraph by a certified or cashier's check or checks made
20 payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the
21 party making the payment, EPA Site/Spill ID No. 0361, and DOJ Case Number 90-11-3-4311.
22 Settling Defendant shall send the check(s) to United States Environmental Protection Agency,

1 Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and
2 shall send copies of the check(s) to the United States as specified in Section XXIII (Notices and
3 Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency,
4 Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by Settling
5 Defendant pursuant to this Paragraph shall be deposited in the Taylor Borough Superfund Site
6 Special Account within the EPA Hazardous Substance Superfund to be retained and used to
7 conduct or finance response actions at or in connection with the Site, or to be transferred by EPA
8 to the EPA Hazardous Substance Superfund

9 42. Settling Defendant may contest payment of any Future Response Costs under
10 Paragraph 41 if they determine that the United States has made an accounting error or if they
11 allege that a cost item that is included represents costs that are inconsistent with the NCP. Such
12 objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to
13 the United States pursuant to Section XXIII (Notices and Submissions). Any such objection shall
14 specifically identify the contested Future Response Costs and the basis for objection. In the event
15 of an objection, the Settling Defendant shall within the thirty (30) day period pay all uncontested
16 Future Response Costs to the United States in the manner described in Paragraph 41.

17 Simultaneously, the Settling Defendant shall establish an interest-bearing escrow account in a
18 federally-insured bank and remit to that escrow account funds equivalent to the amount of the
19 contested Future Response Costs. The Settling Defendant shall send to the United States, as
20 provided in Section XXIII (Notices and Submissions), a copy of the transmittal letter and check
21 paying the uncontested Future Response Costs, and a copy of the correspondence that establishes
22 and funds the escrow account, including, but not limited to, information containing the identity of

the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 41. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 41, Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

43. In the event that the payments required by Paragraph 38 are not made within thirty (30) days of the Effective Date of this Consent Decree or the payments required by Paragraph 41 are not made within thirty (30) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date of this Consent Decree. The Interest shall accrue through the date of Settling Defendant's payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's

failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 58. The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 41.

XIV. INDEMNIFICATION AND INSURANCE

44. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 44(a), and shall consult with Settling Defendant prior to settling such claim.

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

46. No later than fifteen (15) days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of \$500,000, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of

1 policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling
2 Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor
3 maintains insurance equivalent to that described above, or insurance covering the same risks but
4 in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need
5 provide only that portion of the insurance described above which is not maintained by the
6 contractor or subcontractor.

7 **XV. FORCE MAJEURE**

8 47. "Force majeure," for purposes of this Consent Decree, is defined as any event arising
9 from causes beyond the control of the Settling Defendant, of any entity controlled by Settling
10 Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any
11 obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the
12 obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the
13 obligation" includes using best efforts to anticipate any potential force majeure event and best
14 efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b)
15 following the potential force majeure event, such that the delay is minimized to the greatest extent
16 possible. "Force Majeure" does not include financial inability to complete the Work or increased
17 costs.

18 48. If any event occurs or has occurred that may delay the performance of any obligation
19 under this Consent Decree, whether or not caused by a force majeure event, the Settling
20 Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate
21 Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the
22 Director of the EPA Region III Hazardous Site Cleanup Division, within forty-eight (48) hours of

when Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant 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 Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

49. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations on an expedited basis. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendant in writing of its decision. If

EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

50. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 47 and 48, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVI. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

52. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for

informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

53. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 54 or 55.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 54 or 55. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 54 or 55, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth

in Paragraphs 54 and 55.

2 54. Formal dispute resolution for disputes pertaining to the selection or adequacy of any
3 response action and all other disputes that are accorded review on the administrative record under
4 applicable principles of administrative law shall be conducted pursuant to the procedures set forth
5 in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes,
6 without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans,
7 or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of
8 the performance of response actions taken pursuant to this Consent Decree. Nothing in this
9 Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the
10 validity of the provisions of the Records of Decision in connection with the Site.

11 a. An administrative record of the dispute shall be maintained by EPA and shall
12 contain all statements of position, including supporting documentation, submitted pursuant to this
13 Section. Where appropriate, EPA may allow submission of supplemental statements of position
14 by the parties to the dispute.

15 b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue
16 a final administrative decision resolving the dispute based on the administrative record described
17 in Paragraph 54(a). This decision shall be binding upon the Settling Defendant, subject only to
18 the right to seek judicial review pursuant to Paragraph 54(c) and (d).

19 c. Any administrative decision made by EPA pursuant to Paragraph 54(b) shall be
20 reviewable by this Court, provided that a motion for judicial review of the decision is filed by
21 Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of

EPA's decision. The motion shall include a description of the matter in dispute, the efforts made
by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute
must be resolved to ensure orderly implementation of this Consent Decree. The United States
may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant
shall have the burden of demonstrating that the decision of the Director of the Hazardous Site
Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance with
law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to
Paragraph 54(a).

55. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of
any response action nor are otherwise accorded review on the administrative record under
applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted
pursuant to Paragraph 53, the Director of the Hazardous Site Cleanup Division, EPA Region III,
will issue a final decision resolving the dispute. The Director's decision shall be binding on
Settling Defendant unless, within ten (10) days of receipt of the decision, Settling Defendant files
with the Court and serves on the parties a motion for judicial review of the decision setting forth
the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the
schedule, if any, within which the dispute must be resolved to ensure orderly implementation of
the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by

applicable principles of law.

2 56. The invocation of formal dispute resolution procedures under this Section shall not
3 extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent
4 Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties
5 with respect to the disputed matter shall continue to accrue but payment shall be stayed pending
6 resolution of the dispute as provided in Paragraph 55. Notwithstanding the stay of payment,
7 stipulated penalties shall accrue from the first day of noncompliance with any applicable provision
8 of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed
9 issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated
10 Penalties).

11 **XVII. STIPULATED PENALTIES**

12 57. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in
13 Paragraphs 58 and 59 to the United States for failure to comply with the requirements of this
14 Consent Decree specified below, unless excused under Section XV (Force Majeure).
15 “Compliance” by Settling Defendant shall include completion of the activities under this Consent
16 Decree or any work plan or other plan approved under this Consent Decree identified below in
17 accordance with all applicable requirements of law, this Consent Decree, and any plans or other
18 documents approved by EPA pursuant to this Consent Decree and within the specified time
19 schedules established by and approved under this Consent Decree.

20 58. a. The following stipulated penalties shall accrue per violation per day for any
21 noncompliance identified in Paragraph 58(b):

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|-----------------------------------------------|
| \$ 1,000.00 | 1 st through 14 th day |
| \$2,000.00 | 15 th through 30 th day |
| \$5,000.00 | 31 st day and beyond |

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendant), Section VII (Remedy Review), Section X (EPA Approval of Plans and Other Submissions), Section XII (Emergency Response), and Section XIII (Payments for Response Costs).

59. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 59(b):

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|-----------------------------------------------|
| \$ 500.00 | 1 st through 14 th day |
| \$ 1,000.00 | 15 th through 30 th day |
| \$ 1,500.00 | 31 st day and beyond |

b. All requirements of this Consent Decree that are not identified in Paragraph 58(b) of this Consent Decree.

60. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 72 of Section XVIII (Covenant Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$ 100,000.00.

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue:

(1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 54(b) or 55(a) of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XVI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

62. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendant of a violation.

63. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XVI (Dispute Resolution). All payments to the United States under this Section shall be paid by

certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0361, the DOJ Case Number 90-11-3-4311, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXIII (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

64. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

65. Penalties shall continue to accrue as provided in Paragraph 61 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall

1 pay all accrued penalties determined by the District Court to be owing to the United States into an
2 interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order.
3 Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days.
4 Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay
5 the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

6 66. a. If Settling Defendant fails to pay stipulated penalties when due, the United States
7 may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay
8 Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant
9 to Paragraph 63.

10 b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in
11 any way limiting the ability of the United States to seek any other remedies or sanctions available
12 by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon
13 which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA.
14 Provided, however, that for any particular violation of this Consent Decree, the United States shall
15 be limited to either demanding stipulated penalties pursuant to this Section XVII (Stipulated
16 Penalties) of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of
17 CERCLA, except in the case of a willful violation of the Consent Decree.

18 67. Notwithstanding any other provision of this Section, the United States may, in its
19 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to
20 this Consent Decree.

XVIII. COVENANT NOT TO SUE BY PLAINTIFF

2 68. In consideration of the actions that will be performed and the payments that will be
3 made by the Settling Defendant under the terms of the Consent Decree, and except as specifically
4 provided in Paragraphs 69 and 71 of this Section, the United States covenants not to sue or to take
5 administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA
6 for performance of the Work and for recovery of Past Response Costs and Future Response Costs.
7 This covenant not to sue shall take effect upon the receipt by EPA of all payments required by
8 Paragraph 38 of Section XIII (Payments for Response Costs). This covenant not to sue is
9 conditioned upon the satisfactory performance by Settling Defendant of its obligations under this
10 Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not
11 extend to any other person.

12 69. United States' Reservations. Notwithstanding any other provision of this Consent
13 Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to
14 institute proceedings in this action or in a new action, or to issue an administrative order seeking
15 to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to
16 reimburse the United States for additional costs of response if:

17 (i) conditions at the Site, previously unknown to EPA, are discovered, or

18 (ii) information, previously unknown to EPA, is received, in whole or in part,

19 and EPA determines that these previously unknown conditions or this information together with
20 other relevant information indicate that the Remedial Action is not protective of human health or
21 the environment.

70. For purposes of Paragraph 69, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of this Consent Decree and set forth in the Records of Decision, the administrative record supporting the Records of Decision, the post-ROD administrative records, or in any information received by EPA pursuant to the requirements of this Consent Decree.

71. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 68. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

(1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) liability based upon the Settling Defendant's ownership or operation of the Site, or upon the Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the RODs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendant;

(4) liability for damages for injury to, destruction of, or loss of natural resources, and

for the costs of any natural resource damage assessments;

2 (5) criminal liability;

3 (6) liability for violations of federal or state law which occur during implementation
4 of the O & M at the Site; and

5 (7) liability for costs incurred or to be incurred by the Agency for Toxic Substances
6 and Disease Registry related to the Site.

7 72. Work Takeover. In the event EPA determines that Settling Defendant has ceased
8 implementation of any portion of the Work, is seriously or repeatedly deficient or late in its
9 performance of the Work, or is implementing the Work in a manner which may cause an
10 endangerment to human health or the environment, EPA may assume the performance of all or
11 any portions of the Work as EPA determines necessary. Settling Defendant may invoke the
12 procedures set forth in Section XVI (Dispute Resolution), Paragraph 54, to dispute EPA's
13 determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the
14 United States in performing the Work pursuant to this Paragraph shall be considered Future
15 Response Costs that Settling Defendant shall pay pursuant to Section XIII (Payments for
16 Response Costs).

17 73. Notwithstanding any other provision of this Consent Decree, the United States retains
18 all authority and reserves all rights to take any and all response actions authorized by law.

XIX. COVENANTS BY SETTLING DEFENDANT

2 74. Covenant Not to Sue. Subject to the reservations in Paragraph 75, Settling Defendant
3 hereby covenants not to sue and agrees not to assert any claims or causes of action against the
4 United States with respect to the Site or this Consent Decree, including, but not limited to:

5 a. any direct or indirect claim for reimbursement from the Hazardous Substance
6 Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
7 CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

8 b. any claims against the United States, including any department, agency or
9 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

10 c. any claims arising out of response actions at or in connection with the Site,
11 including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the
12 Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

13 Except as provided in Paragraph 77(a) (Waiver of Claims Against *De Micromis* Parties),
14 Paragraph 77(b) (Waiver of Claims Against *De Minimis* Parties), and Paragraph 82 (waiver of
15 Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United
16 States brings a cause of action or issues an order pursuant to the reservations set forth in
17 Paragraphs 69 and 71(2) - (7), but only to the extent that Settling Defendant's claims arise from
18 the same response action, response costs, or damages that the United States is seeking pursuant to
19 the applicable reservation.

20 75. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims
21 against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States

Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

76. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

77. a. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site if:

- (1) any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed

0.2% of the total volume of waste at the Site; and

(2) any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

78. Except as provided in Paragraph 77(a) (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 77(a) (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

79. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree.

80. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

81. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States within ten (10) days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

82. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII (Covenant Not to Sue by Plaintiff).

XXI. ACCESS TO INFORMATION

2 83. Settling Defendant shall provide to EPA, upon request, copies of all documents and
3 information within its possession or control or that of its contractors or agents relating to activities
4 at the Site or to the implementation of this Consent Decree, including, but not limited to,
5 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other
6 documents or information related to the Work. Settling Defendant shall also make available to
7 EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or
8 representatives with knowledge of relevant facts concerning the performance of the Work.

9 84. a. Settling Defendant may assert business confidentiality claims covering part or all
10 of the documents or information submitted to Plaintiff under this Consent Decree to the extent
11 permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or
12 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA
13 will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
14 confidentiality accompanies documents or information when they are submitted to EPA, or if EPA
15 has notified Settling Defendant that the documents or information are not confidential under the
16 standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or
17 information without further notice to Settling Defendant.

18 b. The Settling Defendant may assert that certain documents, records and other
19 information are privileged under the attorney-client privilege or any other privilege recognized by
20 federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it
21 shall provide the Plaintiff with the following: (1) the title of the document, record, or
22 information; (2) the date of the document, record, or information; (3) the name and title of the

author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

85. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXII. RETENTION OF RECORDS

86. Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

87. Settling Defendant shall notify the United States at least ninety (90) days prior to the

destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. If the United States has not responded to Settling Defendant's notice prior to the time Settling Defendant intends to destroy the records or documents, Settling Defendant shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such records and documents will be delivered, unless EPA provides otherwise after receiving such notice. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

88. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXIII. NOTICES AND SUBMISSIONS

2 89. Whenever, under the terms of this Consent Decree, written notice is required to be given
3 or a report or other document is required to be sent by one Party to another, it shall be directed to
4 the individuals at the addresses specified below, unless those individuals or their successors give
5 notice of a change to the other Parties in writing. All notices and submissions shall be considered
6 effective upon receipt, unless otherwise provided. Written notice as specified herein shall
7 constitute complete satisfaction of any written notice requirement of the Consent Decree with
8 respect to the United States, EPA, and Settling Defendant, respectively.

9 As to the United States:

10 Chief, Environmental Enforcement Section
11 Environment and Natural Resources Division
12 U.S. Department of Justice
13 P.O. Box 7611
14 Washington, D.C. 20044-7611
15 Re: DOJ # 90-11-3-4311

16 and

17 Robin E. Eiseman
18 Assistant Regional Counsel (3RC41)
19 United States Environmental Protection Agency
20 Region III
21 1650 Arch Street
22 Philadelphia, PA 19103

As to EPA:

2 Maria de los A. Garcia (3HS21)
3 EPA Project Coordinator
4 United States Environmental Protection Agency
5 Region III
6 1650 Arch Street
7 Philadelphia, PA 19103

8 As to the Settling Defendant:

9 Robert B. Farrell, Esq
10 City Solicitor for City of Scranton
11 340 North Washington Ave.
12 Scranton, PA 18503

13 **XXIV. EFFECTIVE DATE**

14 90. The effective date of this Consent Decree shall be the date upon which this Consent
15 Decree is entered by the Court, except as otherwise provided herein.

16 **XXV. RETENTION OF JURISDICTION**

17 91. This Court retains jurisdiction over both the subject matter of this Consent Decree and
18 the Settling Defendant for the duration of the performance of the terms and provisions of this
19 Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for
20 such further order, direction, and relief as may be necessary or appropriate for the construction or
21 modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to
22 resolve disputes in accordance with Section XVI (Dispute Resolution) hereof.

XXVI. APPENDICES

2 92. The following appendices are attached to and incorporated into this Consent Decree:

3 “Appendix A-1” is the 1985 ROD.

4 “Appendix A-2” is the 1986 ROD.

5 “Appendix B” is the Operation and Maintenance Plan.

6 “Appendix C” is the summary of costs referred to in the definition of “Past Response Costs.”

7 “Appendix D” is the Draft Easement.

8 **XXVII. MODIFICATION**

9 93. Schedules specified in this Consent Decree for completion of the Work may be modified
10 by agreement of the EPA Project Coordinator and Settling Defendant. All such modifications
11 shall be made in writing.

12 94. Except as otherwise provided in this Paragraph, no modifications shall be made to
13 provisions of this Consent Decree without written notification to and written approval of the
14 United States, Settling Defendant, and the Court. Modifications to any plans approved by EPA
15 under this Consent Decree that do not materially alter the requirements of those documents may
16 be made by written agreement between the EPA Project Coordinator and Settling Defendant.
17 Modifications to the Work made pursuant to Paragraph 11 (Modification of the Work) may be
18 made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce,
19 supervise, or approve modifications to this Consent Decree.

XXVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

2 95. This Consent Decree shall be lodged with the Court for a period of not less than thirty
3 (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42
4 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or
5 withhold its consent if the comments regarding the Consent Decree disclose facts or
6 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.
7 Settling Defendant consents to the entry of this Consent Decree without further notice.

8 96. If for any reason the Court should decline to approve this Consent Decree in the form
9 presented, this agreement is voidable at the sole discretion of any Party and the terms of the
10 agreement may not be used as evidence in any litigation between the Parties.

XXIX. SIGNATORIES/SERVICE

11
12 97. The undersigned representative of Settling Defendant to this Consent Decree and the
13 Assistant Attorney General for the Environment and Natural Resources Division of the
14 Department of Justice certifies that he or she is fully authorized to enter into the terms and
15 conditions of this Consent Decree and to execute and legally bind such Party to this document.

16 98. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this
17 Court or to challenge any provision of this Consent Decree unless the United States has notified
18 Settling Defendant in writing that it no longer supports entry of the Consent Decree.

19 99. Settling Defendant shall identify, on the attached signature page, the name, address, and
20 telephone number of an agent who is authorized to accept service of process by mail on behalf of
21 Settling Defendant with respect to all matters arising under or relating to this Consent Decree.
22 Settling Defendant hereby agrees to accept service in that manner and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXX. FINAL JUDGMENT

100. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

*THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States
v. City of Scranton, relating to the Taylor Borough Superfund Site.*

FOR THE UNITED STATES OF AMERICA

W. BENJAMIN FISHEROW
Deputy Section Chief
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

JEFFREY D. TALBERT
Environmental Enforcement Section
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Jun 21 2007 15:50

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FOR CITY OF SCRANTON:

[Signature] *Gerald J. Butler*

Please Type the Following:

Name: Gerald J. Butler

Title: Assistant City Solicitor for City of Scranton

Address: 340 North Washington Ave.
Scranton, PA 18503

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Gerald J. Butler

Title: Assistant City Solicitor for City of Scranton

Address: 340 North Wasington Ave., Scranton, PA 18503

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