



*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA, and the  
COMMONWEALTH OF PENNSYLVANIA,**

**Plaintiffs,**

**v.**

**AK STEEL CORPORATION, et al.**

**Defendants.**

**Civil Action No. 97-1863**

**REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE**

**I. BACKGROUND**

A. Concurrent with the filing of this Consent Decree, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), has filed a fourth amended complaint in this matter, (“Complaint”), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”), 42 U.S.C. § 9607. No Settling Defendant opposes the United States’ concurrent motion for leave to file its amended complaint.

B. The United States in its Complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Breslube-Penn Superfund Site in Moon Township, Pennsylvania, together with accrued interest; (2) performance of studies and response work by the defendants at the Site in accordance with the National Contingency Plan, 40 C.F.R. Part 300 (as amended); and (3) a declaratory judgment of liability for all unreimbursed response costs incurred or to be incurred by the United States that will be binding on any subsequent action or actions to recover such further response costs.

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1 C. In accordance with the National Contingency Plan and Section 121(f)(1)(F) of CERCLA,  
2 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania (the  
3 “Commonwealth”) on December 14, 2007, of negotiations with potentially responsible parties  
4 regarding the implementation of the Remedial Design and Remedial Action for the Site, and EPA  
5 has provided the Commonwealth with an opportunity to participate in such negotiations and be a  
6 party to this Consent Decree.

7 D. The Commonwealth has also filed a complaint against the Settling Defendants in this  
8 Court alleging that the Settling Defendants are liable to the Commonwealth under Section 107 of  
9 CERCLA, 42 U.S.C. § 9607.

10 E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified  
11 the National Oceanic and Atmospheric Administration on December 19, 2007, of negotiations  
12 with potentially responsible parties regarding the release of hazardous substances that may have  
13 resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s)  
14 to participate in the negotiation of this Consent Decree.

15 F. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not  
16 admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the  
17 Complaint, nor do they acknowledge that the release or threatened release of hazardous  
18 substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public  
19 health or welfare or the environment.

20 G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the  
21 National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal

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1 Register on June 17, 1996, 61 Fed. Reg. 30510.

2 H. In January 2000, in response to a release or a substantial threat of a release of a  
3 hazardous substance(s) at or from the Site, EPA issued an Administrative Order on Consent to a  
4 subset of Settling Defendants (i.e., CBS Corporation, Exxon Mobil Corporation, Ford Motor  
5 Company, General Motors Corporation, Hussey Copper, Ltd., and United States Steel  
6 Corporation, collectively the "Work Group"), for the performance of a Remedial Investigation  
7 and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

8 I. The Work Group completed the Remedial Investigation ("RI") Report in August 2005,  
9 and the Work Group completed a Feasibility Study ("FS") Report on December 6, 2006 (with an  
10 addendum completed in February 2007).

11 J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the  
12 completion of the FS and of the proposed plan for remedial action on March 30, 2007, in a major  
13 local newspaper of general circulation. EPA provided an opportunity for written and oral  
14 comments from the public on the proposed plan for remedial action. A copy of the transcript of  
15 the public meeting is available to the public as part of the administrative record upon which the  
16 Regional Administrator based the selection of the response action.

17 K. The decision by EPA on the remedial action to be implemented at the Site is embodied in  
18 a final Record of Decision ("ROD"), executed on August 30, 2007, on which the Commonwealth  
19 has given its concurrence. The ROD includes EPA's explanation for any significant differences  
20 between the final plan and the proposed plan as well as a responsiveness summary to the public  
21 comments. Notice of the final plan was published in accordance with Section 117(b) of

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1 CERCLA.

2 L. Based on the information presently available to EPA and the Commonwealth, EPA and  
3 the Commonwealth believe that the Work will be properly and promptly conducted by the Settling  
4 Performing Defendants if conducted in accordance with the requirements of this Consent Decree  
5 and its appendices.

6 M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the  
7 Remedial Action selected by the ROD and the Work to be performed by the Settling Performing  
8 Defendants shall constitute a response action taken or ordered by the President.

9 N. The Parties recognize, and the Court by entering this Consent Decree finds, that this  
10 Consent Decree has been negotiated by the Parties in good faith and implementation of this  
11 Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated  
12 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public  
13 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. §§ 9607, and 9613(b). This Court also has personal jurisdiction  
18 over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying  
19 Complaint, Settling Defendants waive all objections and defenses that they may have to  
20 jurisdiction of the Court or to venue in this District, including but not limited to those based on  
21 statute of limitations. Settling Defendants shall not challenge the terms of this Consent Decree or

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1 this Court's jurisdiction to enter and enforce this Consent Decree.

2 **III. PARTIES BOUND**

3 2. This Consent Decree applies to and is binding upon the United States, the  
4 Commonwealth and upon Settling Defendants and their heirs, successors and assigns. Any  
5 change in ownership or corporate status of a Settling Defendant including, but not limited to, any  
6 transfer of assets or real or personal property, shall in no way alter such Settling Defendants'  
7 responsibilities under this Consent Decree.

8 3. Settling Performing Defendants shall provide a copy of this Consent Decree to each  
9 contractor hired to perform the Work (as defined below) required by this Consent Decree and to  
10 each person representing any Settling Defendant with respect to the Site or the Work and shall  
11 condition all contracts entered into hereunder upon performance of the Work in conformity with  
12 the terms of this Consent Decree. Settling Performing Defendants or their contractors shall  
13 provide written notice of the Consent Decree to all subcontractors hired to perform any portion of  
14 the Work required by this Consent Decree. Settling Performing Defendants shall nonetheless be  
15 responsible for ensuring that their contractors and subcontractors perform the Work contemplated  
16 herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant  
17 to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual  
18 relationship with the Settling Performing Defendants within the meaning of Section 107(b)(3) of  
19 CERCLA, 42 U.S.C. § 9607(b)(3).

20 **IV. DEFINITIONS**

21 4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are

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1 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning  
2 assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in  
3 this Consent Decree or in the appendices attached hereto and incorporated hereunder, the  
4 following definitions shall apply:

5 “Breslube-Penn Special Account” shall mean the special account established at the Site by  
6 EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

7 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and  
8 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

9 “Commonwealth” shall mean the Commonwealth of Pennsylvania.

10 “Consent Decree” shall mean this Decree and all appendices attached hereto (listed in  
11 Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall  
12 control.

13 “Contingent Remedial Action 1” shall mean the components of the remedy, as set forth in  
14 the ROD at pages 38-46, Section 12, “Selected Remedy,” to be implemented to address the  
15 contamination at the Site in the event that EPA determines that the Waste Management  
16 Containment Area System (WMACS) has failed or will fail to meet Performance Standards.

17 “Contingent Remedial Action 2” shall mean the components of the remedy, as set forth in  
18 the ROD at pages 38-46, Section 12, “Selected Remedy,” to be implemented to address the  
19 contamination at the Site in the event that EPA determines that the Enhanced Monitored Bio-  
20 attenuation (EMBA) Remedial Action failed or will fail to meet and maintain all of the EMBA  
21 Remedial Action Performance Standards.



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1 “Contingent Remedial Action 1 and/or 2 Operation and Maintenance” shall mean all  
2 activities required to maintain the effectiveness of the Contingent Remedial Action pursuant to the  
3 Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

4 “Contingent Remedial Action 1 and/or 2 Work Plan” shall mean the document developed  
5 pursuant to Paragraph 12(f) of this Consent Decree and approved by EPA, and any amendments  
6 thereto. Because these components of the remedy are contingent upon the results of whether the  
7 containment system and/or EMBA will meet Performance Standards, design efforts have been  
8 deferred until the need for these remedial components are determined in accordance with  
9 Paragraph 10 of this Consent Decree.

10 “Contingent Remedial Design 1 and/or 2 Work Plan” shall mean the document developed  
11 pursuant to Paragraph 12(f) of this Consent Decree and approved by EPA, and any amendments  
12 thereto.

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

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

19 “Effective date” shall be the effective date of this Consent Decree as provided in Section  
20 XXVII of this Consent Decree.

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

3 “Future Response Costs” shall mean all costs, including, but not limited to, direct and  
4 indirect costs, that the United States and/or the Commonwealth incur in connection with the Site  
5 after February 28, 2007, and February 1, 2009, respectively. Future Response Costs shall also  
6 include, (a) all Interest on those Past Response Costs Settling Defendants have agreed to  
7 reimburse under this Consent Decree which has accrued pursuant to 42 U.S.C. § 9707(a) for the  
8 United States during the period from February 28, 2007, to the date of payment, and for the  
9 Commonwealth during the period from February 1, 2009, to the date of payment, (b) all costs of  
10 the United States and the Commonwealth incurred prior to February 28, 2007, and February 1,  
11 2009, respectively, which are not identified on the summary of costs attached hereto as Appendix  
12 A and F.

13 “Institutional Controls” shall mean those measures that are instituted to control the use of  
14 land, such as easements, covenants, title notices, and land use restrictions through orders from or  
15 agreements with EPA, to prevent the use of the Site in any manner that would interfere with  
16 implementation of or adversely affect the integrity or protectiveness of the selected remedy.  
17 Those institutional controls include, but are not limited to, measures to provide for worker safety  
18 and a prohibition on use of the Site for residential purposes. Institutional controls also include,  
19 but are not limited to, a prohibition on the installation and/or use of groundwater wells, unless  
20 those activities are necessary to implement the selected remedy. Those institutional controls  
21 include, but are not limited to, those controls set forth in Paragraphs 28(b) and 28(c) of this

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1 Consent Decree, and also as set forth in Appendix B of this Consent Decree.

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

7 “Matters Addressed” shall mean and include all response costs incurred and to be incurred  
8 by the United States with respect to the Site and all response actions taken or to be taken in  
9 connection with the Site, provided that “matters addressed” shall not include any matter as to  
10 which the United States has reserved its rights in this Consent Decree.

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

14 “Operation and Maintenance” or “O & M” shall mean all activities required to maintain the  
15 effectiveness of the Remedial Action as required under the Operation and Maintenance Plan  
16 approved or developed by EPA pursuant to this Consent Decree.

17 “PADEP” shall mean the “Pennsylvania Department of Environmental Protection” and any  
18 successor departments or agencies of the Commonwealth.

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

21 “Parties” shall mean the United States, the Commonwealth, and the Settling Defendants.

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1 “Past Response Costs” shall mean those costs, including, but not limited to, direct and  
2 indirect costs, which the United States has paid at or in connection with the Site through February  
3 28, 2007 and which are identified in the summary of costs attached hereto as Appendix A, plus  
4 Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through February 28,  
5 2007; together with all costs, including, but not limited to, direct and indirect costs, that the  
6 Commonwealth has paid at or in connection with the Site through January 31, 2009, and which  
7 are identified in the summary of costs attached hereto as Appendix F, plus Interest on all such  
8 costs which accrued pursuant to 42 U.S.C. § 9607(a) through such date.

9 “Performance Standards” shall mean the cleanup standards and other measures of  
10 achievement of the goals of the Remedial Action, set forth on pages 39-46 of the ROD attached  
11 hereto as Appendix C and those that are developed by the Settling Performing Defendants and  
12 approved by EPA during Remedial Design.

13 “Plaintiffs” shall mean the United States and the Commonwealth of Pennsylvania.

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

16 “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site  
17 signed on August 30, 2007 and any amendments or explanation of significant differences thereto,  
18 by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments thereto.  
19 The ROD is attached as Appendix C.

20 “Remedial Action” shall mean those activities, except for Remedial Design and Operation  
21 and Maintenance, to be undertaken by the Settling Performing Defendants to implement the ROD,

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1 in accordance with the final Remedial Design and Remedial Action Work Plans and other plans  
2 approved by EPA.

3 “Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph  
4 12 of this Consent Decree and approved by EPA, and any amendments thereto.

5 “Remedial Design” shall mean those activities to be undertaken by the Settling Performing  
6 Defendants to develop the final plans and specifications for the Remedial Action pursuant to the  
7 Remedial Design Work Plan.

8 “Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 12  
9 of this Consent Decree and approved by EPA, and any amendments thereto.

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

11 “Settling Defendants” shall mean the Parties identified in Appendix D (Settling Non-  
12 Performing Defendants) and Parties identified in Appendix E (Settling Performing Defendants),  
13 including their successors-in-interest, but only to the extent that such successor entities’ liability is  
14 alleged to derive from the respective Settling Defendant’s CERCLA liability for the Site.

15 “Settling Non-Performing Defendants” shall mean the Settling Defendants identified and so  
16 designated in Appendix D.

17 “Settling Performing Defendants” shall mean the Settling Defendants identified and so  
18 designated in Appendix E.

19 “Site” shall mean the Breslube-Penn Superfund Site, encompassing approximately 7 acres,  
20 located on both Ewing Road and at 84 Montour Road in Moon Township, Allegheny County,  
21 Pennsylvania and depicted in the ROD, and any areas to which hazardous substances deposited or

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1 released on the 7 acre parcel have migrated.

2 “Supervising Contractor” shall mean the principal contractor retained by the Settling  
3 Performing Defendants to supervise and direct the implementation of the Work under this  
4 Consent Decree.

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

6 “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of  
7 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42  
8 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C.  
9 § 6903(27).

10 “Work” shall mean all activities Settling Performing Defendants are required to perform  
11 under this Consent Decree, except those required by Section XXV (Retention of Records).

## 12 **V. GENERAL PROVISIONS**

### 13 **5. Objectives of the Parties**

14 The objectives of the Parties in entering into this Consent Decree are to protect public health  
15 or welfare or the environment at the Site by the design and implementation of response actions at  
16 the Site by the Settling Performing Defendants, to reimburse response costs of the Plaintiffs, and  
17 to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

### 18 **6. Commitments by Settling Defendants**

19 a. Settling Performing Defendants shall finance and perform the Work in accordance  
20 with this Consent Decree, the ROD, and all work plans and other plans, standards, specifications,  
21 and schedules set forth herein or developed by Settling Performing Defendants and approved by

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1 EPA pursuant to this Consent Decree. Settling Performing Defendants shall also reimburse the  
2 United States and the Commonwealth for Past Response Costs and Future Response Costs as  
3 provided in this Consent Decree.

4 b. The obligations of Settling Performing Defendants to finance and perform the  
5 Work and to pay amounts owed the United States and the Commonwealth under this Consent  
6 Decree are joint and several. In the event of the insolvency or other failure of any one or more  
7 Settling Performing Defendants to implement the requirements of this Consent Decree, the  
8 remaining Settling Performing Defendants shall complete all such requirements.

9 c. In the event that any of the Settling Performing Defendants files for bankruptcy or  
10 is placed involuntarily in bankruptcy proceedings, such Settling Performing Defendant shall notify  
11 the United States within three (3) days of such filing.

12 d. As negotiated between Settling Performing Defendants and Settling Non-  
13 Performing Defendants, the Settling Non-Performing Defendants each have agreed to pay the  
14 Settling Performing Defendants, within thirty (30) days after each of their execution of this  
15 Consent Decree, all monies necessary to satisfy any claims Settling Performing Defendants' may  
16 have under, inter alia, Sections 106, 107 or 113 of CERCLA for response actions or response  
17 costs relating to, or arising out of, the Breslube-Penn Superfund Site. Specifically, each Settling  
18 Non-Performing Defendant has agreed to pay the amount listed next to its name in Appendix D,  
19 which amounts total \$4,332,421.42. Accordingly, subject to the United States' reservations of  
20 rights set forth in Section XXI (Covenants Not to Sue by Plaintiffs), the Settling Non-Performing  
21 Defendants shall have no further obligations under this Consent Decree except as otherwise

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1 specifically set forth in this Consent Decree or in any agreement between the Settling Defendants.

2 **7. Compliance With Applicable Law**

3 All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree  
4 shall be performed in accordance with the requirements of all applicable federal and state laws  
5 and regulations. Settling Performing Defendants must also comply with all applicable or relevant  
6 and appropriate requirements of all Federal and state environmental laws as set forth in the ROD.  
7 The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered  
8 to be 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 Performing Defendants shall submit timely and complete  
15 applications and take all other actions necessary to obtain all such permits or approvals.

16 b. The Settling Performing Defendants may seek relief under the provisions of  
17 Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the  
18 Work resulting from a 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.



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1           9. Notice of Obligations to Successors-in-Title

2           a. With respect to any property owned or controlled by any Settling Defendant(s)  
3 that is located within the Site, within fifteen (15) days after the entry of this Consent Decree, such  
4 Settling Defendant(s) shall submit to EPA and the Commonwealth for review and approval a  
5 notice to be filed with the Recorder's Office, Allegheny County, Commonwealth of  
6 Pennsylvania, which shall provide notice to all successors-in-title that the property is part of the  
7 Site, that EPA selected a remedy for the Site on August 30, 2007, and that potentially responsible  
8 parties have entered into a Consent Decree requiring implementation of the remedy. Such  
9 notice(s) shall identify the United States District Court in which the Consent Decree was filed, the  
10 name and civil action number of this case, and the date the Consent Decree was entered by the  
11 Court. Such Settling Defendant(s) shall record the notice(s) within ten (10) days of EPA's and  
12 the Commonwealth's approval of the notice(s). Such Settling Defendant(s) shall provide EPA  
13 and the Commonwealth with a certified copy of the recorded notice(s) within ten (10) days of  
14 recording such notice(s).

15           b. At least thirty (30) days prior to the conveyance of any interest in property  
16 located within the Site including, but not limited to, fee interests, leasehold interests, and  
17 mortgage interests, any Settling Defendant(s) conveying the interest shall give the grantee written  
18 notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been  
19 conveyed that confers a right of access to the Site (hereinafter referred to as "access easements")  
20 pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an  
21 interest in real property has been conveyed that confers a right to enforce restrictions on the use of

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1 such property (hereinafter referred to as “restrictive easements”) pursuant to Section IX (Access  
2 and Institutional Controls). At least thirty (30) days prior to such conveyance, any Settling  
3 Defendant(s) conveying the interest shall also give written notice to EPA and the Commonwealth  
4 of the proposed conveyance, which notice shall include the name and address of the grantee and  
5 the date on which notice of the Consent Decree, access easements, and/or restrictive easements  
6 was given to the grantee.

7 c. In the event of any such conveyance, the conveying Settling Defendant's  
8 obligations under this Consent Decree, including, but not limited to, its obligation to provide or  
9 secure access and Institutional Controls, as well as to abide by such Institutional Controls,  
10 pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue  
11 to be met by the conveying Settling Defendant(s). In no event shall the conveyance release or  
12 otherwise affect the liability of the conveying Settling Defendant(s) to comply with all provisions  
13 of this Consent Decree, absent the prior written consent of EPA and the Commonwealth. If the  
14 United States approves, the grantee may perform some or all of the Work under this Consent  
15 Decree.

16 **VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS**

17 10. Implementation of the Remedial Design and Remedial Action and, if Required by EPA,  
18 the Contingent Remedial Design and Remedial Action 1 and/or 2

19 a. Pursuant to the ROD and as required by the Consent Decree, Settling Performing  
20 Defendants shall perform the Remedial Design and Remedial Action and the Remedial Action  
21 Operation and Maintenance.

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1           b. As provided in the ROD, if EPA determines, in its unreviewable discretion, that  
2 the WMACS and/or the WMACS Remedial Action Operation and Maintenance has failed or will  
3 fail to meet and maintain Performance Standards, EPA may issue a determination of remedy  
4 failure. Such determination will be in writing. EPA will notify Settling Performing Defendants in  
5 writing that they are to implement the Contingent Remedial Action 1, as set forth in the ROD and  
6 as required by this Consent Decree.

7           c. In the event that the Contingent Remedial Action 1 is implemented, Paragraph  
8 12(f) shall also apply. EPA's selection of the Contingent Remedial Action 1, the components of  
9 the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," shall not be  
10 subject to judicial review, through the dispute resolution procedures of Section XIX or otherwise.

11           d. Pursuant to the ROD, if within five years from the date of the ROD, performance  
12 standards have not been met nor successfully demonstrated that they will be met using EMBA  
13 technology, EPA will conduct a performance review to determine whether the EMBA Remedial  
14 Action will meet or maintain the Performance Standards. If EPA determines, in its unreviewable  
15 discretion, that the EMBA Remedial Action and/or the EMBA Remedial Action Operation and  
16 Maintenance has failed or will fail to meet and maintain the Performance Standards, EPA may  
17 issue a determination of remedy failure. Such determination shall be in writing. EPA will notify  
18 Settling Performing Defendants in writing that they are to implement the Contingent Remedial  
19 Action 2, as set forth in the ROD and as required by this Consent Decree.

20           e. In the event that the Contingent Remedial Action 2 is implemented, Paragraph  
21 12(f) shall also apply. EPA's selection of the Contingent Remedial Action 2, the components of

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1 the remedy, as set forth in the ROD at pages 38-46, Section 12, "Selected Remedy," shall not be  
2 subject to judicial review, through the dispute resolution procedures of Section XIX or otherwise.

3 11. Selection of Contractors.

4 a. Supervising Contractor.

5 i. All aspects of the Work to be performed by Settling Performing Defendants  
6 pursuant to Sections VI (Performance of the Work by Settling Performing Defendants), VII  
7 (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency  
8 Response) of this Consent Decree, shall be under the direction and supervision of the Supervising  
9 Contractor, the selection of which shall be subject to acceptance or disapproval by EPA. Within  
10 ten (10) days after the Effective Date of this Consent Decree, Settling Performing Defendants shall  
11 notify EPA and the Commonwealth in writing of the name, title, and qualifications of any  
12 contractor proposed to be the Supervising Contractor. Additionally, Paragraph 12(f)(1) shall  
13 govern the time frame for such notification regarding the Supervising Contractor for the  
14 Contingent Remedial Action 1 and/or 2, if required by EPA. With respect to any contractor  
15 proposed to be Supervising Contractor, Settling Performing Defendants shall demonstrate that the  
16 proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications  
17 and Guidelines for Quality Systems for Environmental Data Collection and Environmental  
18 Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of  
19 the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in  
20 accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-  
21 01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice

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1 of disapproval or acceptance of the selection of such Supervising Contractor. If at any time  
2 thereafter, Settling Performing Defendants propose to change a Supervising Contractor, Settling  
3 Performing Defendants shall give such notice to EPA and the Commonwealth and must obtain a  
4 notice of acceptance of such change from EPA, upon consultation with the Commonwealth, before  
5 the new Supervising Contractor performs, directs, or supervises any Work under this Consent  
6 Decree.

7           ii. If EPA disapproves the selection of a proposed Supervising Contractor,  
8 EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall  
9 submit to EPA and the Commonwealth a list of at least three contractors, including the  
10 qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt  
11 of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose  
12 selection it would accept. Settling Performing Defendants may select any contractor from that list  
13 and shall notify EPA and the Commonwealth of the name of the contractor selected within twenty-  
14 one (21) days of EPA's written notice.

15           iii. If EPA fails to provide written notice of its acceptance or disapproval as  
16 provided in this Paragraph and this failure prevents the Settling Performing Defendants from  
17 meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree,  
18 Settling Performing Defendants may seek relief under the provisions of Section XVIII (Force  
19 Majeure) of this Consent Decree.

20           b. Other Contractors and Subcontractors.

21           i. The Settling Performing Defendants shall submit to EPA and the

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1 Commonwealth for acceptance by EPA the names and qualifications of any additional contractors  
2 and subcontractors they propose to use to satisfy any requirement of this Consent Decree before  
3 such contractor or subcontractor performs any Work. If EPA does not respond with a notice  
4 accepting or disapproving the proposal for additional contractors and subcontractors within  
5 fourteen (14) days of receipt by EPA of Settling Performing Defendants' selections, the proposal  
6 for additional contractors and subcontractors shall be deemed accepted. In the event EPA  
7 disapproves any proposed contractor or subcontractor, Settling Performing Defendants shall submit  
8 to EPA and the Commonwealth a list of at least three contractors or subcontractors, including the  
9 qualifications of each, that would be acceptable to them within twenty (20) days of receipt of  
10 EPA's notice. EPA will provide written notice of the names of any contractor(s) or  
11 subcontractor(s) whose selection it would accept. Settling Performing Defendants may select any  
12 contractor or subcontractor from that list and shall notify EPA and the Commonwealth of the name  
13 of the contractor or subcontractor selected within five (5) days of EPA's written notice.

14 12. Remedial Design/Remedial Action.

15 a. Within forty five (45) days after EPA's acceptance of the selection of the  
16 Supervising Contractor pursuant to Paragraph 11, Settling Performing Defendants shall submit to  
17 EPA and the Commonwealth a work plan for the design of the Remedial Action at the Site  
18 ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall be prepared by the  
19 individual(s) and/or entity(ies) responsible for completion of the Remedial Design, except to the  
20 extent such persons have been disapproved by EPA. The Remedial Design Work Plan shall  
21 provide for design of the remedy set forth in the ROD and for achievement of the Performance

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1 Standards and other requirements set forth in the ROD and this Consent Decree. Upon its approval  
2 by EPA, after consultation with the Commonwealth, the Remedial Design Work Plan shall be  
3 incorporated into and become enforceable under this Consent Decree. The Settling Performing  
4 Defendants shall also submit to EPA and the Commonwealth, at the time the Remedial Design  
5 Work plan is submitted, a Health and Safety Plan for field design activities which conforms to the  
6 applicable Occupational Safety and Health Administration and EPA requirements including, but  
7 not limited to, 29 C.F.R. § 1910.120.

8 b. The Remedial Design Work Plan shall include plans, schedules, and  
9 methodologies for implementation of all remedial design and pre-design tasks and shall include, at  
10 a minimum:

- 11 1. a Site Management Plan;
- 12 2. a Sampling and Analysis Plan, containing:
  - 13 a. a Field Sampling Plan; and
  - 14 b. a Quality Assurance Project Plan (QAPP);
- 15 3. a Remedial Design Contingency Plan;
- 16 4. a. a Treatability Study Work Plan which includes, at a minimum,  
17 plans and schedules for the preparation and submission of a  
18 Treatability Study Evaluation Report;
  - 19 b. a Basis of Design Report, including:
    - 20 1. justification of design assumptions;
    - 21 2. a project delivery strategy;

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- 1 3. remedial action permits plan for off-site permits;
- 2 4. preliminary easement/access requirements;
- 3 c. Preliminary Drawings and Specifications, including:
  - 4 1. outline of general specifications;
  - 5 2. preliminary schematics and drawings;
  - 6 3. chemical and geotechnical data (including data from  
7 pre-design activities);
- 8 d. a value engineering screen; and
- 9 e. preliminary Remedial Action schedule.
- 10 5. plans and schedules for the preparation and submission of a  
11 Preliminary Design Submittal (the preliminary design begins with the  
12 initial design and ends with the completion of approximately 30% of  
13 the design effort) containing, at a minimum:
  - 14 a. a Design Criteria Report, including:
    - 15 1. project description;
    - 16 2. design requirements and provisions;
    - 17 3. preliminary process flow diagrams;
    - 18 4. operation & maintenance requirements;
  - 19 b. a Basis of Design Report, including:
    - 20 1. justification of design assumptions;
    - 21 2. a project delivery strategy;



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- 1 3. remedial action permits plan for off-site permits;
- 2 4. preliminary easement/access requirements;
- 3 c. Preliminary Drawings and Specifications, including:
  - 4 1. outline of general specifications;
  - 5 2. preliminary schematics and drawings;
  - 6 3. chemical and geotechnical data (including data from  
7 pre-design activities);
  - 8 d. a value engineering screen; and
  - 9 e. preliminary Remedial Action schedule.
- 10 6. plans and schedules for the preparation and submission of a pre-final  
11 design submittal which shall be submitted at approximately 90% of the  
12 design effort and shall address all of EPA's comments (upon  
13 consultation with the Commonwealth) to the preliminary design, and,  
14 at a minimum, additionally include:
  - 15 a. a preliminary Operation & Maintenance Plan;
  - 16 b. a preliminary Construction Quality Assurance Plan ("CQAP")  
17 (the CQAP, which shall detail the approach to quality assurance  
18 during construction activities at the Site, shall specify a quality  
19 assurance official ("QA Official"), independent of the  
20 Supervising Contractor, to conduct a quality assurance program  
21 during the construction phase of the project);

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- c. a preliminary Remedial Action decontamination plan;
- d. a draft final Remedial Action schedule;
- e. a draft final Remedial Action contingency plan; and
- f. a draft final Remedial Action HASP for EPA acceptance, after consultation with the Commonwealth.

7. plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's (upon consultation with the Commonwealth) comments to the pre-final design, and, at a minimum, additionally include:

- a. a final Remedial Action schedule;
- b. a final Remedial Action contingency plan;
- c. a final Remedial Action HASP for EPA acceptance;
- d. a final Remedial Action waste management plan;
- e. a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action decontamination plan;
- f. a final Design Criteria Report;
- g. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);

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- 1 h. a final Basis of Design Report;
- 2 i. final Drawings and Specifications;
- 3 j. a revised Operation & Maintenance Plan and a schedule for
- 4 submission of the final Operation & Maintenance Plan;
- 5 k. a final Construction Quality Assurance Plan;
- 6 l. a final Remedial Action decontamination plan; and
- 7 m. a final project delivery strategy.

8 8. a Remedial Design schedule.

9 c. Upon approval of the Remedial Design Work Plan by EPA, upon consultation with  
10 the Commonwealth, and submittal of the Health and Safety Plan for all field activities to EPA and  
11 the Commonwealth, Settling Performing Defendants shall implement the Remedial Design Work  
12 Plan in accordance with the schedules and methodologies contained therein. The Settling  
13 Performing Defendants shall submit to EPA and the Commonwealth all plans, submittals, and  
14 other deliverables required under the approved Remedial Design Work Plan in accordance with the  
15 approved schedule therein for review and approval pursuant to Section XI (EPA Approval of Plans  
16 and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall  
17 not commence further Remedial Design field activities at the Site prior to approval of the Remedial  
18 Design Work Plan.

19 d. Upon approval, approval with conditions, or modification by EPA, as provided in  
20 Section XI (EPA Approval of Plans and Other Submissions), of all components of the final design  
21 submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be

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1 enforceable under this Consent Decree. The Settling Performing Defendants shall implement the  
2 activities required under the Remedial Action Work Plan in accordance with the schedules and  
3 methodologies contained therein.

4 e. The Settling Performing Defendants shall submit all plans, submittals, or other  
5 deliverables required under the Remedial Action Work Plan in accordance with the approved  
6 schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other  
7 Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work  
8 Plan, the Settling Performing Defendants shall not commence physical activities at the Site prior to  
9 the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

10 f. Contingent Remedial Design/Contingent Remedial Action, if Required By  
11 EPA

12 1. Within fifteen (15) days after Settling Performing Defendants' receipt of  
13 EPA's notification of Remedial Action failure and to perform the Contingent Remedial Action 1  
14 and/or 2, pursuant to Paragraph 10 above, Settling Performing Defendants shall notify EPA and the  
15 Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be  
16 the Supervising Contractor for the Contingent Remedial Action 1 and/or 2 pursuant to Paragraph  
17 11 above.

18 2. Settling Performing Defendants shall submit an amendment to the  
19 Remedial Design Work Plan to implement the Contingent Remedial Action 1 and/or 2 pursuant to  
20 Paragraph 12(a). above.

21 3. The Amendment to the Remedial Design Work Plan to implement the

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1 Contingent Remedial Action 1 and/or 2 shall include all items in Paragraph 12(b) above and be  
2 implemented pursuant to the provisions in Paragraph (12)(c)-(e).

3 13. Each and every Section of this Consent Decree shall apply to the Remedial Action and to  
4 the Contingent Remedial Action 1 and/or 2, if EPA determines that the Contingent Remedial  
5 Action 1 and/or 2 should be implemented under the terms of this Consent Decree and the ROD.

6 14. Resident Engineer. Following EPA approval, approval with conditions, or modification  
7 by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all  
8 components of the final design submittal, and prior to commencement of any on-Site Work under  
9 the Remedial Action Work Plan and, if required by EPA, the Contingent Remedial Action Work  
10 Plan 1 and/or 2, the Settling Performing Defendants shall submit to EPA and the Commonwealth  
11 the name and qualifications of a Resident Engineer to be present at the Site during construction to  
12 ensure that the Work is performed in accordance with the approved Remedial Action Work Plan  
13 and, if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2. The Resident  
14 Engineer shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains  
15 the right to disapprove the use of any Resident Engineer proposed by Settling Performing  
16 Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling  
17 Performing Defendants shall submit to EPA and the Commonwealth a list of at least three  
18 replacements, including the qualifications of each, who would be acceptable to them within fifteen  
19 (15) days of receipt of EPA's notice. EPA will provide written notice of the names of any  
20 replacements whose use it would accept. Settling Performing Defendants may select any  
21 replacement from the EPA notice and shall notify EPA and the Commonwealth of the name of the

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1 replacement selected within ten (10) days of EPA's written notice. Settling Performing  
2 Defendants shall ensure that the Resident Engineer performs on-Site inspections as necessary to  
3 ensure compliance with the approved Remedial Action Work Plan and, if required by EPA, the  
4 Contingent Remedial Action Work Plan 1 and/or 2 and that the results of such inspections are  
5 promptly provided to Settling Performing Defendants, EPA, and the Commonwealth. The  
6 Resident Engineer may act as the QA Official.

7 15. The Settling Performing Defendants shall continue to implement the Remedial Action  
8 and O & M and, if required by EPA, the Contingent Remedial Action 1 and/or 2 and Contingent  
9 Remedial Action Operation & Maintenance 1 and/or 2, until the Performance Standards are  
10 achieved and for so long thereafter as is otherwise required under this Consent Decree.

11 16. Modification of the Work.

12 a. If EPA determines that modification of the Work is necessary to achieve and  
13 maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy  
14 set forth in the ROD, EPA may (1) require that such modification be incorporated into the  
15 Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and,  
16 if required by EPA, the Contingent Remedial Action Work Plan 1 and/or 2 and the Contingent  
17 Operation & Maintenance Plan 1 and/or 2 and/or any other plan relating to such Work, and/or (2)  
18 require that Settling Performing Defendants submit a plan for EPA approval, upon consultation  
19 with the Commonwealth, which incorporates such modification to the Work and implement such  
20 approved plan. Provided, however, that a modification may be required pursuant to this Paragraph  
21 only to the extent that it is consistent with the scope of the remedy selected in the ROD.

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1           b. For the purposes of this Paragraph 16 and Paragraphs 53 and 54 only, the “scope of  
2 the remedy selected in the ROD” means:

3           i. tasks employing a technology or combination of technologies discussed in  
4 Section 12.0 of the ROD, including the Performance Standards set forth in Section 12.2, to  
5 achieve and maintain the objectives described in the ROD. The technologies discussed in Section  
6 12.0 of the ROD include:

- 7           a. excavation of off-facility and on-facility [outside the Waste  
8 Management Area (“WMA”)] contaminated soils;
- 9           b. a RCRA-modified cap over the WMA and a vertical slurry wall  
10 containment system around the perimeter of the WMA;
- 11           c. a product recovery disposal system to remove floating and  
12 collectible Light Non-aqueous Phase Liquid from the soil and  
13 surface of the groundwater table.
- 14           d. Enhancement of in-situ bioremediation through injection of  
15 reagents to reduce concentrations of VOCs in groundwater  
16 outside the WMA to performance standards.
- 17           e. The contingency technology for the groundwater both within  
18 and outside the WMA area is extraction and treatment of  
19 groundwater.

20           ii tasks associated with monitoring of Site conditions and the effectiveness of  
21 the Remedial Action.

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1                   iii implementation of institutional controls, as defined herein.

2                   c. If Settling Performing Defendants object to any modification determined by EPA  
3 to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section  
4 XIX (Dispute Resolution), Paragraph 71 (record review). The Remedial Design Work Plan,  
5 Remedial Action Work Plan, Operation and Maintenance Plan, and, if required by EPA, the  
6 Contingent Remedial Action Work Plan1 and/or 2 and Contingent Operation and Maintenance  
7 Plan 1 and/or 2 and/or related work plans shall be modified in accordance with final resolution of  
8 the dispute.

9                   d. Settling Performing Defendants shall implement any work required by any  
10 modifications incorporated in the Remedial Design Work Plan, Remedial Action Work Plan,  
11 Operation and Maintenance Plan, and, if required by EPA, the Contingent Remedial Action Work  
12 Plan1 and/or 2 and Contingent Operation & Maintenance Plan 1 and/or 2 and/or in work plans  
13 developed in accordance with this Paragraph.

14                   e. Nothing in this Paragraph shall be construed to limit EPA's or the  
15 Commonwealth's authority to require performance of further response actions as otherwise  
16 provided in this Consent Decree.

17                   17. Settling Performing Defendants acknowledge and agree that nothing in this Consent  
18 Decree or the Remedial Design/Remedial Action Work Plans and, if required by EPA, the  
19 Contingent Remedial Action Work Plan 1 and/or 2 constitutes a warranty or representation of any  
20 kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will  
21 achieve the Performance Standards.



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1 18. Settling Performing Defendants shall, prior to any off-Site shipment of Waste Material  
2 from the Site to a waste management facility, provide written notification to the appropriate state  
3 environmental official in the receiving facility's state and to the EPA and the Commonwealth's  
4 Project Coordinators of such shipment of Waste Material. However, as to EPA, this notification  
5 requirement shall not apply to any off-Site shipments when the total volume of all such shipments  
6 will not exceed ten (10) cubic yards.

7 a. The Settling Performing Defendants shall include in the written notification the  
8 following information, where available:

- 9 1. the name and location of the facility to which the Waste Material is to be  
10 shipped;
- 11 2. the type and quantity of the Waste Material to be shipped;
- 12 3. the expected schedule for the shipment of the Waste Material; and
- 13 4. the method of transportation.

14 The Settling Performing Defendants shall notify the state in which the planned receiving facility is  
15 located of major changes in the shipment plan, such as a decision to ship the Waste Material to  
16 another facility within the same state, or to a facility in another state.

17 b. The identity of the receiving facility and state will be determined by the Settling  
18 Performing Defendants following the award of the contract for Remedial Action construction. The  
19 Settling Performing Defendants shall provide the information required by Paragraph 18(a) as soon  
20 as practicable after the award of the contract but in no case less than seven (7) days before the  
21 Waste Material is actually shipped.

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1 c. Before shipping any hazardous substances, pollutants, or contaminants from the  
2 Site to an off-site location, Settling Performing Defendants shall obtain EPA's certification that  
3 the proposed receiving facility is operating in compliance with the requirements of Section  
4 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Settling Performing Defendants shall only send  
5 hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies  
6 with the requirements of the statutory provision and regulations cited in the preceding sentence.

7 **VII. REMEDY REVIEW**

8 19. Periodic Review. Settling Performing Defendants shall conduct any studies and  
9 investigations of the Site as requested by EPA, in order to permit EPA to conduct reviews of  
10 whether the Remedial Action is protective of human health and the environment, at least every five  
11 (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

12 20. EPA Selection of Further Response Actions. If EPA determines, at any time, that the  
13 Remedial Action or, if required by EPA, the Contingent Remedial Action 1 and/or 2 is not  
14 protective of human health and the environment, EPA may select further response actions for the  
15 Site in accordance with the requirements of CERCLA and the NCP.

16 21. Opportunity To Comment. Settling Performing Defendants and, if required by Sections  
17 113(k)(2) or 117 of CERCLA, the public will be provided with an opportunity to comment on any  
18 further response actions proposed by EPA as a result of the review conducted pursuant to Section  
19 121(c) of CERCLA and to submit written comments for the record during the comment period.

20 22. Settling Performing Defendants' Obligation To Perform Further Response Actions. If  
21 EPA selects further response actions for the Site, the Settling Performing Defendants shall

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1 undertake such further response actions to the extent that the reopener conditions in Paragraph 86  
2 or Paragraph 87 (United States' reservations of liability based on unknown conditions or new  
3 information) are satisfied. If EPA requires Settling Performing Defendants to undertake such  
4 further actions pursuant to this Paragraph, Settling Performing Defendants may invoke the  
5 procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that  
6 the reopener conditions of Paragraph 86 or Paragraph 87 of Section XXI (Covenants Not To Sue  
7 by Plaintiffs) are satisfied, (2) EPA's determination that the Remedial Action is not protective of  
8 human health and the environment, or (3) EPA's selection of the further response actions. Disputes  
9 pertaining to whether the Remedial Action is protective or to EPA's selection of further response  
10 actions shall be resolved pursuant to Paragraph 71 (record review).

11 23. Submissions of Plans. If Settling Performing Defendants are required to perform the  
12 further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA  
13 for approval upon consultation with the Commonwealth in accordance with the procedures set  
14 forth in Section VI (Performance of the Work by Settling Performing Defendants) and shall  
15 implement the plan approved by EPA in accordance with the provisions of this Decree.

#### 16 **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

17 24. While conducting all sample collection and analysis activities required by this Consent  
18 Decree, the Settling Performing Defendants shall implement quality assurance, quality control, and  
19 chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project  
20 Plans (EPA QA/R-5)"(EPA 240 B-01 003, March 2001); "EPA NEIC Policies and Procedures  
21 Manual," (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data  
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1 Review (OSWER 9240, 1-45 EPA 540/R-04-00 October 2004) and Modifications to the National  
2 Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National  
3 Functional Guidelines for Organic Data Review (EPA 540/R-07-003, July 2007) and Modifications  
4 to the National Functional Guidelines for Organic Data Review (EPA Region III: September  
5 1994); "Region III Innovative Approaches to Data Validation," (EPA Region III: September 1995);  
6 "Data Quality Objectives Process for Superfund," (EPA 540/R-93/071: September 1994);  
7 "Uniform Federal Policy for Quality Assurance Project Plans", (EPA 505 B-04-900A, March  
8 2005), and subsequent amendments to such guidelines upon notification by EPA to Settling  
9 Performing Defendants of such amendment. Amended guidelines shall apply only to procedures  
10 conducted after such notification. Prior to the commencement of any monitoring project under this  
11 Consent Decree, Settling Performing Defendants shall submit to EPA for approval, upon  
12 consultation with the Commonwealth, a Quality Assurance Project Plan ("QAPP") for the Work  
13 that is consistent with the NCP and the guidance documents cited above. If relevant to the  
14 proceeding, the Parties agree that validated sampling data generated in accordance with the  
15 QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in  
16 any proceeding under this Decree. Settling Performing Defendants shall ensure that EPA and  
17 Commonwealth personnel and their authorized representatives are allowed access at reasonable  
18 times to all laboratories utilized by Settling Performing Defendants in implementing this Consent  
19 Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall  
20 analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring.  
21 Settling Performing Defendants shall ensure that the laboratories they utilize for the analysis of

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1 samples taken pursuant to this Decree perform all analyses according to accepted EPA methods.

2 Settling Performing Defendants shall submit to EPA the selected laboratory's(ies') Quality  
3 Assurance Program Plan and their qualifications, which shall include, at a minimum, previous  
4 certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes.

5 Settling Performing Defendants shall ensure that all field methodologies utilized in collecting  
6 samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the  
7 procedures set forth in the QAPP approved by EPA. At the request of EPA, Settling Performing  
8 Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical  
9 capability and compliance with the QAPP. Auditors shall conduct lab audits during the time the  
10 laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall  
11 be conducted according to procedures available from the QA Branch. Audit reports shall be  
12 submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The  
13 Settling Performing Defendants shall report serious deficiencies, including all those which  
14 adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies  
15 within twenty-four (24) hours of the time the Settling Performing Defendants knew or should have  
16 known of the deficiency.

17 25. Upon request, the Settling Performing Defendants shall allow split or duplicate  
18 samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling  
19 Performing Defendants shall notify EPA and the Commonwealth not less than 28 days in advance  
20 of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and  
21 the Commonwealth shall have the right to take any additional samples that EPA deems necessary.

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1 Upon request, EPA and the Commonwealth shall allow the Settling Performing Defendants to take  
2 split or duplicate samples of any samples it takes as part of the Plaintiffs' oversight of the Settling  
3 Performing Defendants' implementation of the Work.

4 26. Settling Performing Defendants shall submit to EPA five (5) copies, in paper and  
5 electronic form, and to the Commonwealth two (2) copies of the results of all sampling and/or tests  
6 or other data obtained or generated by or on behalf of Settling Performing Defendants with respect  
7 to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

8 27. Notwithstanding any provision of this Consent Decree, the United States and the  
9 Commonwealth hereby retains all of its information gathering and inspection authorities and rights,  
10 including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable  
11 statutes or regulations.

12 **IX. ACCESS AND INSTITUTIONAL CONTROLS**

13 28. If the Site, or any other property where access and/or land/water use restrictions are  
14 needed to implement this Consent Decree, is owned or controlled by any of the Settling  
15 Defendants, such Settling Defendants shall:

16 a. commencing on the date of lodging of this Consent Decree, provide the United  
17 States, the Commonwealth and their representatives, including EPA and its contractors, with  
18 access at all reasonable times to the Site, or such other property, for the purpose of conducting any  
19 activity related to this Consent Decree including, but not limited to, the following activities:

- 20 i. Monitoring the Work;
- 21 ii. Verifying any data or information submitted to the United States;

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- 1                   iii. Conducting investigations relating to contamination at or near the Site;
- 2                   iv. Obtaining samples;
- 3                   v. Assessing the need for, planning, or implementing additional response
- 4 actions at or near the Site;
- 5                   vi. Assessing implementation of quality assurance and quality control
- 6 practices as defined in the approved Quality Assurance Project Plans;
- 7                   vii. Implementing the Work pursuant to the conditions set forth in
- 8 Paragraph 90 of this Consent Decree (Work Takeover);
- 9                   viii. Inspecting and copying records, operating logs, contracts, or other
- 10 documents maintained or generated by Settling Performing Defendants or their agents, consistent
- 11 with Section XXIV;
- 12                   ix. Assessing Settling Performing Defendants' compliance with this Consent
- 13 Decree; and
- 14                   ix. Determining whether the Site or other property is being used in a manner
- 15 that is prohibited ore restricted, or that may need to be prohibited or restricted, by or pursuant to
- 16 this Consent Decree;
- 17                   b. commencing on the date of lodging of this Consent Decree, refrain from using
- 18 the Site, or such other property, in any manner that would interfere with or adversely affect the
- 19 implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to
- 20 this Consent Decree. Such restrictions include, but are not limited to, preventing the extraction of
- 21 ground water for potable and/or non-potable uses, and inhibiting access to the Waste Management

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1 Area; and

2 c. If EPA so requests, execute and record in the Recorder's Office of Allegheny  
3 County, Commonwealth of Pennsylvania, an easement, running with the land, that (i) grants a right  
4 of access for the purpose of conducting any activity related to this Consent Decree including, but  
5 not limited to, those activities listed in Paragraph 28(a) of this Consent Decree, and (ii) grants the  
6 right to enforce the land/water use restrictions listed in Paragraph 28(b) of this Consent Decree, or  
7 other restrictions that EPA and the Commonwealth determine are necessary to implement, ensure  
8 non-interference with, or ensure the protectiveness of the remedial measures to be performed  
9 pursuant to this Consent Decree. Such Settling Performing Defendants shall grant the access rights  
10 and the rights to enforce the land/water use restrictions to one or more of the following persons, as  
11 determined by EPA (i) the United States, on behalf of EPA, and its representatives, (ii) the  
12 Commonwealth and its representatives, (iii) the other Settling Performing Defendants and their  
13 representatives, and/or (iv) other appropriate grantees. Such Settling Performing Defendants shall,  
14 within forty-five (45) days of entry of this Consent Decree, submit to EPA and the Commonwealth  
15 for review and approval with respect to such property:

16 (1) A draft easement, in substantially the form attached hereto as Appendix  
17 B, that is enforceable under the laws of the Commonwealth of Pennsylvania,  
18 including the Uniform Environmental Covenants Act; and

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



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1 Within fifteen (15) days of EPA's approval upon consultation with the Commonwealth and  
2 acceptance of the easement and the title evidence, such Settling Performing Defendants shall  
3 update the title search and, if it is determined that nothing has occurred since the effective date of  
4 the commitment to affect the title adversely, record the easement with the Recorder's Office of  
5 Allegheny County. Within thirty (30) days of recording the easement, such Settling Performing  
6 Defendants shall provide EPA and the Commonwealth with a final title insurance policy, or other  
7 final evidence of title acceptable to EPA and the Commonwealth, and a certified copy of the  
8 original recorded easement showing the clerk's recording stamps. If the easement is to be  
9 conveyed to the United States, the easement and title evidence (including final title evidence) shall  
10 be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval  
11 of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

12 29. If the Site, or any other property where access and/or land/water use restrictions are  
13 needed to implement this Consent Decree, is owned or controlled by persons other than any of the  
14 Settling Performing Defendants, Settling Performing Defendants shall use best efforts to secure  
15 from such persons:

16 a. an agreement to provide access thereto for Settling Performing Defendants, as  
17 well as for the United States on behalf of EPA, and the Commonwealth, as well as their  
18 representatives (including contractors), for the purpose of conducting any activity related to this  
19 Consent Decree including, but not limited to, those activities listed in Paragraph 28(a) of this  
20 Consent Decree;

21 b. an agreement, enforceable by the Settling Performing Defendants and the United

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1 States and the Commonwealth, to refrain from using the Site, or such other property, in any manner  
2 that would interfere with or adversely affect the implementation, integrity, or protectiveness of the  
3 remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but  
4 are not limited to extracting ground water for potable and/or non-potable uses, and inhibiting  
5 access to the source area; and

6 c. If EPA or the Commonwealth requests, the execution and recordation in the  
7 Recorder's Office of Allegheny County, Commonwealth of Pennsylvania, of an easement, running  
8 with the land, that (i) grants a right of access for the purpose of conducting any activity related to  
9 this Consent Decree including, but not limited to, those activities listed in Paragraph 28(a) of this  
10 Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in  
11 Paragraph 28(b) of this Consent Decree, or other restrictions that EPA determines are necessary to  
12 implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to  
13 be performed pursuant to this Consent Decree. The access rights and/or rights to enforce  
14 land/water use restrictions shall be granted to one or more of the following persons, as determined  
15 by EPA (i) the United States, on behalf of EPA, and its representatives, (ii) the Commonwealth  
16 and its representatives, (iii) the other Settling Performing Defendants and their representatives,  
17 and/or (iv) other appropriate grantees. Within forty-five (45) days of entry of this Consent Decree,  
18 Settling Performing Defendants shall submit to EPA for review and approval upon consultation  
19 with the Commonwealth with respect to such property:

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

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

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

18 30. For purposes of Paragraph 29 of this Consent Decree, "best efforts" includes the  
19 payment of reasonable sums of money in consideration of access, access easements, land/water use  
20 restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or  
21 encumbrance. Notwithstanding the foregoing, the term "best efforts" shall not require the  
22 payment of any sums of money to any of the current or past owners and operators of the Site. If (a)  
23 any access or land/water use restriction agreements required by Paragraphs 29(a) or 29(b) of this

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1 Consent Decree are not obtained within forty-five (45) days of the date of entry of this Consent  
2 Decree, (b) any access easements or restrictive easements required by Paragraph 29(c) of this  
3 Consent Decree are not submitted to EPA and the Commonwealth in draft form within forty-five  
4 (45) days of the date of entry of this Consent Decree, or (c) Settling Performing Defendants are  
5 unable to obtain an agreement pursuant to Paragraph 28(c)(1) or Paragraph 29(c)(1) from the  
6 holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the  
7 easement being created pursuant to this Consent Decree within forty-five (45) days of the date of  
8 entry of this Consent Decree, Settling Performing Defendants shall promptly notify the United  
9 States and the Commonwealth in writing, and shall include in that notification a summary of the  
10 steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 29 of  
11 this Consent Decree. The United States may, as it deems appropriate, assist Settling Performing  
12 Defendants in obtaining access or land/water use restrictions, either in the form of contractual  
13 agreements or in the form of easements running with the land, or in obtaining the release or  
14 subordination of a prior lien or encumbrance. Settling Performing Defendants shall reimburse the  
15 United States in accordance with the procedures in Section XVI (Payments for Response Costs),  
16 for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water  
17 use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not  
18 limited to, the cost of attorney time and the amount of monetary consideration paid or just  
19 compensation.

20 31. If EPA, either individually or after consultation with the Commonwealth, determines  
21 that land/water use restrictions in the form of state or local laws, regulations, ordinances or other

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1 governmental controls are needed to implement the remedy selected in the ROD, ensure the  
2 integrity and protectiveness thereof, or ensure non-interference therewith, Settling Performing  
3 Defendants shall cooperate with EPA and the Commonwealth's efforts to secure such  
4 governmental controls.

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

9 **X. REPORTING REQUIREMENTS**

10 33. In addition to any other requirement of this Consent Decree, Settling Performing  
11 Defendants shall submit to EPA five (5) copies, in paper and electronic form, and to the  
12 Commonwealth three (3) copies of written monthly progress reports, along with an electronic  
13 version of each, that: (a) describe the actions which have been taken toward achieving compliance  
14 with this Consent Decree during the previous month; (b) include a summary of all results of  
15 sampling and tests and all other data received or generated by Settling Performing Defendants or  
16 their contractors or agents in the previous month; (c) identify all work plans, plans, and other  
17 deliverables required by this Consent Decree completed and submitted during the previous month;  
18 (d) describe all actions, including, but not limited to, data collection and implementation of work  
19 plans, which are scheduled for the next six weeks and provide other information relating to the  
20 progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert  
21 charts; (e) include information regarding percentage of completion, unresolved delays encountered

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1 or anticipated that may affect the future schedule for implementation of the Work, and a  
2 description of efforts made to mitigate those delays or anticipated delays; (f) include any  
3 modifications to the work plans or other schedules that Settling Performing Defendants have  
4 proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in  
5 support of the Community Relations Plan during the previous month and those to be undertaken in  
6 the next six weeks. Settling Performing Defendants shall submit these progress reports to EPA and  
7 the Commonwealth by the tenth day of every month following the Effective Date of this Consent  
8 Decree until EPA notifies the Settling Performing Defendants pursuant to Paragraph 54(b) of  
9 Section XIV (Certification of Completion). If requested by EPA, Settling Performing Defendants  
10 shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

11 34. The Settling Performing Defendants shall notify EPA and the Commonwealth of any  
12 change in the schedule described in the monthly progress report for the performance of any  
13 activity, including, but not limited to, implementation of work plans, no later than seven (7) days  
14 prior to the performance of the activity. Notwithstanding the foregoing, the Settling Performing  
15 Defendants shall notify EPA and the Commonwealth of any change in the schedule described in  
16 the monthly progress reports for the performance of data collection no later than thirty (30) days  
17 prior to the performance of such activity.

18 35. Upon the occurrence of any event during performance of the Work that Settling  
19 Performing Defendants are required to report pursuant to Section 103 of CERCLA or Section 304  
20 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Performing  
21 Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA

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1 Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of  
2 the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or  
3 Alternate EPA Project Coordinator is available, the EPA Region III Hotline at (215) 814-3255, as  
4 well as the Project Coordinator or, if unavailable, Alternate Project Coordinator for the  
5 Commonwealth, at (412) 442-4000. These reporting requirements are in addition to the reporting  
6 required by CERCLA § 103 or EPCRA § 304.

7 36. Within twenty (20) days of the onset of such an event, Settling Performing Defendants  
8 shall furnish to Plaintiffs a written report, signed by the Settling Performing Defendants' Project  
9 Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in  
10 response thereto. Within thirty (30) days of the conclusion of such an event, Settling Performing  
11 Defendants shall submit a report to EPA and to the Commonwealth setting forth all actions taken  
12 in response thereto.

13 37. Settling Performing Defendants shall submit 4 (four) copies of all plans, reports, and  
14 data required by the Remedial Design Work Plan, the Remedial Action Work Plan, Contingent  
15 Remedial Design/Contingent Remedial Action Work Plan 1 and/or 2 or any other approved plans  
16 to EPA in accordance with the schedules set forth in such plans. Settling Performing Defendants  
17 shall simultaneously submit 3 (three) copies of all such plans, reports, and data to the  
18 Commonwealth. Upon request by EPA, Settling Performing Defendants shall submit in electronic  
19 form all portions of any report or other deliverable Settling Performing Defendants are required to  
20 submit pursuant to the provisions of this Consent Decree.

21 38. All reports and other documents submitted by Settling Performing Defendants to EPA



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1 (other than the monthly progress reports referred to above) which purport to document Settling  
2 Performing Defendants' compliance with the terms of this Consent Decree shall be signed by a  
3 Duly Authorized Representative of the Settling Performing Defendants.

4 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

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

16 40. In the event of approval, approval upon conditions, or modification by EPA, pursuant  
17 to Paragraph 39(a), (b), or (c), Settling Performing Defendants shall proceed to take any action  
18 required by the plan, report, or other item, as approved or modified by EPA subject only to their  
19 right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution)  
20 with respect to the modifications or conditions made by EPA. In the event that EPA modifies the  
21 submission to cure the deficiencies pursuant to Paragraph 39(c) and the submission has a material



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1 defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated  
2 Penalties).

3 41. a. Upon receipt of a notice of disapproval pursuant to Paragraph 39(d), Settling  
4 Performing Defendants shall, within fourteen (14) days, or such other time as specified by EPA in  
5 such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any  
6 stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during  
7 the fourteen (14)-day period, or otherwise specified period, but shall not be payable unless the  
8 resubmission is disapproved or modified due to a material defect as provided in Paragraphs 42 and  
9 43.

10 b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph  
11 39(d), Settling Performing Defendants shall proceed, at the direction of EPA, to take any action  
12 required by any non-deficient portion of the submission. Implementation of any non-deficient  
13 portion of a submission shall not relieve Settling Performing Defendants of any liability for  
14 stipulated penalties under Section XX (Stipulated Penalties).

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

21 43. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to

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1 a material defect, Settling Performing Defendants shall be deemed to have failed to submit such  
2 plan, report, or item timely and adequately unless the Settling Performing Defendants invoke the  
3 dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is  
4 overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and  
5 Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and  
6 payment of any stipulated penalties during dispute resolution. If EPA's disapproval or  
7 modification is upheld, stipulated penalties shall accrue for such violation from the date on which  
8 the initial submission was originally required, as provided in Section XX.

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

## 14 **XII. PROJECT COORDINATORS**

15 45. The EPA and Commonwealth Project Coordinators and Alternate Project Coordinators  
16 for this Site are:

17 EPA Project Coordinator:  
18 Bhupendra Khona (3HS22)  
19 U.S. Environmental Protection Agency  
20 1650 Arch Street  
21 Philadelphia, PA 19103  
22 (215) 814-3213 (phone)  
23 (215) 814-3002 (telefax)  
24

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EPA Alternate Project Coordinator:

Linda Dietz (3HS22)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-3195 (phone)  
(215) 814-3002 (telefax)

Commonwealth Project Coordinator:

Dawna Saunders  
Pennsylvania Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
(412) 442-4000 (phone)  
(412) 442-4194 (telefax)

Commonwealth Alternate Project Coordinator:

Barbara Gunter  
Pennsylvania Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
(412) 442-4000 (phone)  
(412) 442-4194 (telefax)

Within twenty (20) days of the Effective Date of this Consent Decree, Settling Performing Defendants will notify EPA and the Commonwealth, in writing, of the name, address and telephone number of their designated Project Coordinator(s) and Alternate Project Coordinator(s).

If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Defendants' Project

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1 Coordinator and Alternate Project Coordinator shall not be an attorney for any of the Settling  
2 Performing Defendants in this matter. The Settling Performing Defendants' Project Coordinator  
3 and Alternate Project Coordinator may assign other representatives, including other contractors, to  
4 serve as a Site representative for oversight of performance of daily operations during remedial  
5 activities.

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

17 47. EPA's Project Coordinator and the Commonwealth's Project Coordinator and the  
18 Settling Performing Defendants' Project Coordinator will meet or confer by phone, at a minimum,  
19 on a monthly basis.

### 20 **XIII. PERFORMANCE GUARANTEE**

21 48. In order to ensure the full and final completion of the Work, Settling Performing

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1 Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in an  
2 amount equal to the "Estimated Cost of the Work," which initially shall be \$8,070,000. The  
3 Performance Guarantee, which must be satisfactory in form and substance to EPA, shall be in one  
4 or more of the following mechanisms (provided that, if Settling Performing Defendants intend to  
5 use multiple mechanisms, such multiple mechanisms shall be limited to trust funds, surety bonds  
6 and letters of credit):

7 a. A surety bond unconditionally guaranteeing payment and/or performance of the  
8 Work that is issued by a surety company among those listed as acceptable sureties on federal bonds  
9 as set forth in Circular 570 of the U.S. Department of the Treasury;

10 b. One or more irrevocable letters of credit, payable to or at the direction of EPA,  
11 that is issued by one or more financial institution(s) (i) that has the authority to issue letters of  
12 credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or  
13 State agency;

14 c. A trust fund established for the benefit of EPA that is administered by a trustee  
15 (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and  
16 examined by a U.S. Federal or State agency;

17 d. A demonstration by one Settling Performing Defendant that such Settling  
18 Performing Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the  
19 Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are  
20 satisfied; or

21 e. A written guarantee to fund or perform the Work executed in favor of EPA by

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1 one of the following: (i) a direct or indirect parent company of a Settling Performing Defendant, or  
2 (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h))  
3 with at least one Settling Performing Defendant; provided, however, that any company providing  
4 such a guarantee must demonstrate to the satisfaction of EPA that it meets the requirements for  
5 owners and operators in subparagraphs (1) through (3) and (5) through (8) of 40 C.F.R.

6 §264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

7 Within ten days after the Effective Date, Settling Performing Defendants shall execute or otherwise  
8 finalize all instruments or other documents required in order to make the selected Performance  
9 Guarantee(s) legally binding in a form substantially identical to the documents attached hereto as  
10 Appendix G, and such Performance Guarantee(s) shall thereupon be fully effective. Within 30  
11 days of the Effective Date, Settling Performing Defendants shall submit all executed and/or  
12 otherwise finalized instruments or other documents required in order to make the selected  
13 Performance Guarantee(s) legally binding to EPA and the United States in accordance with Section  
14 XXVI (Notices and Submissions), with a copy to the Chief, Cost Recovery Branch for EPA Region  
15 III.

16 49. If at any time during the effective period of this Consent Decree, Settling Performing  
17 Defendants provide a Performance Guarantee for completion of the Work by means of a  
18 demonstration or guarantee pursuant to Paragraphs 48(d) or 48(e), the relevant Settling Performing  
19 Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f),  
20 relating to these methods unless otherwise provided in this Consent Decree, including but not  
21 limited to (i) the initial submission of required financial reports and statements from the relevant

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1 entity's chief financial officer and independent certified public accountant; (ii) the annual re-  
2 submission of such reports and statements within 90 days after the close of each such entity's fiscal  
3 year; and (iii) the notification of EPA within 90 days after the close of any fiscal year in which  
4 such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1).

5 Solely for purposes of the Performance Guarantee mechanisms specified in this Section XIII,  
6 references in 40 C.F.R. Part 264, Subpart H, to: "closure," "post-closure," and "plugging and  
7 abandonment" shall be deemed to include the Work required under this Consent Decree; "current  
8 closure cost estimate," "current post closure cost estimate," and "current plugging and  
9 abandonment cost estimate" shall be deemed to include all the dollar amounts described in  
10 paragraphs 1-4 of the "Model CFO Letter," attached hereto as Appendix H; "owner" and  
11 "operator" shall be deemed to refer to the Settling Defendant making a demonstration under  
12 Paragraph 48(d); "facility" and "hazardous waste facility" shall be deemed to include the Site; and  
13 a letter required by 40 C.F.R. § 264.151(f) shall be deemed to refer to a letter in the form attached  
14 hereto as Appendix H.

15 50. In the event that EPA determines at any time that a Performance Guarantee provided  
16 pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in  
17 this Section, whether due to an increase in the estimated cost of completing the Work or for any  
18 other reason, or in the event that any Settling Performing Defendant becomes aware of information  
19 indicating that a Performance Guarantee provided pursuant to this Section is inadequate or  
20 otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase  
21 in the estimated cost of completing the Work or for any other reason, Settling Performing

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1 Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be,  
2 within 30 days of any Settling Performing Defendant becoming aware of such information, shall  
3 obtain and present to EPA for approval a proposal for a revised or alternative form of Performance  
4 Guarantee listed in Paragraph 48 that satisfies all requirements set forth in this Section XIII. In  
5 seeking approval for a revised or alternative form of Performance Guarantee, Settling Performing  
6 Defendants shall follow the procedures set forth in Paragraph 52(b)(2). Settling Performing  
7 Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way  
8 excuse performance of any other requirements of this Consent Decree, including, without  
9 limitation, the obligation of Settling Performing Defendants to complete the Work in strict  
10 accordance with the terms hereof.

11 51. The commencement of any Work Takeover pursuant to Paragraph 90 shall trigger  
12 EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to  
13 Paragraphs 48(a), 48(b), 48(c), or 48(e), and at such time EPA shall have immediate access to  
14 resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as  
15 needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any  
16 reason EPA is unable to promptly secure the resources guaranteed under any such Performance  
17 Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by  
18 EPA under the Work Takeover, or in the event that the Performance Guarantee involves a  
19 demonstration of satisfaction of the financial test criteria pursuant to Paragraph 48(d), Settling  
20 Performing Defendants shall immediately upon written demand from EPA deposit into an account  
21 specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of



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1 any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be  
2 performed as of such date, as determined by EPA. In addition, if at any time EPA is notified by the  
3 issuer of a Performance Guarantee that such issuer intends to cancel the Performance Guarantee  
4 mechanism it has issued, then, unless Settling Performing Defendants provide a substitute  
5 Performance Guarantee mechanism in accordance with this Section XIII no later than 30 days prior  
6 to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days  
7 prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing  
8 Performance Guarantee.

9 52. Modification of Amount and/or Form of Performance Guarantee.

10 a. Reduction of Amount of Performance Guarantee. If Settling Performing  
11 Defendants believe that the estimated cost to complete the remaining Work has diminished below  
12 the amount set forth in Paragraph 48, Settling Performing Defendants may, on any anniversary of  
13 the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request  
14 a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that  
15 the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to  
16 be performed. Settling Performing Defendants shall submit a written proposal for such reduction  
17 to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the  
18 basis upon which such cost was calculated. In seeking approval for a revised or alternative form of  
19 Performance Guarantee, Settling Performing Defendants shall follow the procedures set forth in  
20 Paragraph 52(b)(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning  
21 Settling Performing Defendants of such decision in writing. After receiving EPA's written

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1 acceptance, Settling Performing Defendants may reduce the amount of the Performance Guarantee  
2 in accordance with and to the extent permitted by such written acceptance. In the event of a  
3 dispute, Settling Performing Defendants may reduce the amount of the Performance Guarantee  
4 required hereunder only in accordance with a final administrative or judicial decision resolving  
5 such dispute pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any  
6 Performance Guarantee provided under this Section, other than a reduction in amount, is  
7 authorized except as provided in Paragraphs 49 or 52(b).

8 b. Change of Form of Performance Guarantee.

9 (1) If, after the Effective Date, Settling Performing Defendants desire to change the  
10 form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling  
11 Performing Defendants may, on any anniversary of the Effective Date, or at any other time agreed  
12 to by the Parties, petition EPA in writing to request a change in the form of the Performance  
13 Guarantee provided hereunder. The submission of such proposed revised or alternative form of  
14 Performance Guarantee shall be as provided in Paragraph 52(b)(2). Any decision made by EPA on  
15 a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion,  
16 and such decision shall not be subject to challenge by Settling Performing Defendants pursuant to  
17 the dispute resolution provisions of this Consent Decree or in any other forum.

18 (2) Settling Performing Defendants shall submit a written proposal for a revised or  
19 alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the  
20 estimated cost of the remaining Work to be performed, the basis upon which such cost was  
21 calculated, and the proposed revised form of Performance Guarantee, including all proposed

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1 instruments or other documents required in order to make the proposed Performance Guarantee  
2 legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy  
3 all requirements set forth or incorporated by reference in this Section. Settling Performing  
4 Defendants shall submit such proposed revised or alternative form of Performance Guarantee to  
5 EPA and the United States in accordance with Section XXVI ("Notices and Submissions"), with a  
6 copy to the Chief, Cost Recovery Branch for EPA Region III. EPA shall notify Settling  
7 Performing Defendants in writing of its decision to accept or reject a revised or alternative  
8 Performance Guarantee submitted pursuant to this Paragraph. Upon EPA's acceptance of Settling  
9 Performing Defendants' proposal for a revised or alternative Performance Guarantee, the  
10 Estimated Cost of the Work shall be deemed to be the estimated cost of the remaining Work set  
11 forth in Settling Performing Defendants' approved proposal. Within ten days after receiving a  
12 written decision approving the proposed revised or alternative Performance Guarantee, Settling  
13 Performing Defendants shall execute and/or otherwise finalize all instruments or other documents  
14 required in order to make the selected Performance Guarantee(s) legally binding in a form  
15 substantially identical to the documents submitted to EPA as part of the proposal, and such  
16 Performance Guarantee(s) shall thereupon be fully effective. Settling Performing Defendants shall  
17 submit all executed and/or otherwise finalized instruments or other documents required in order to  
18 make the selected Performance Guarantee(s) legally binding within 30 days of receiving a written  
19 decision approving the proposed revised or alternative Performance Guarantee to EPA and the  
20 United States in accordance with Section XXVI ("Notices and Submissions"), with a copy to the  
21 Chief, Cost Recovery Branch for EPA Region III.

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1           c. Release of Performance Guarantee. If Settling Performing Defendants receive  
2 written notice from EPA in accordance with Paragraph 53 that the Work has been fully and finally  
3 completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies  
4 Settling Performing Defendants in writing, Settling Performing Defendants may thereafter release,  
5 cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling  
6 Performing Defendants shall not release, cancel, or discontinue any Performance Guarantee  
7 provided pursuant to this Section except as provided in this Paragraph. In the event of a dispute,  
8 Settling Performing Defendants may release, cancel, or discontinue the Performance Guarantee(s)  
9 required hereunder only in accordance with a final administrative or judicial decision resolving  
10 such dispute pursuant to Section XIX (Dispute Resolution).

11           d. Contingent Remedy. In the event that EPA provides written notice pursuant to  
12 Paragraph 10(b) or 10(d) above that Settling Performing Defendants are to implement Contingent  
13 Remedial Action 1 and/or 2, then, within thirty (30) days of receipt of any such notice, Settling  
14 Performing Defendants shall obtain and present to EPA for approval a proposal for a revised or  
15 alternative form of Performance Guarantee listed in Paragraph 48 that satisfies all requirements set  
16 forth in this Section XIII. In seeking approval for a revised or alternative form of Performance  
17 Guarantee, Settling Performing Defendants shall follow the procedures set forth in  
18 Paragraph 52(b)(2). Settling Performing Defendants' inability to post a Performance Guarantee for  
19 completion of the Work shall in no way excuse performance of any other requirements of this  
20 Consent Decree, including, without limitation, the obligation of Settling Performing Defendants to  
21 complete the Work in strict accordance with the terms hereof.

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**XIV. CERTIFICATION OF COMPLETION**

53. Completion of the Remedial Action

a. Within ninety (90) days after Settling Performing Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Performing Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Performing Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Performing Defendant or the Settling Performing Defendants' Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, upon consultation with the Commonwealth, determines that the Remedial Action or any

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1 portion thereof has not been completed in accordance with this Consent Decree or that the  
2 Performance Standards have not been achieved, EPA will notify Settling Performing Defendants in  
3 writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this  
4 Consent Decree to complete the Remedial Action and achieve the Performance Standards.

5 Provided, however, that EPA may only require Settling Performing Defendants to perform such  
6 activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope  
7 of the remedy selected in the ROD," as that term is defined in Paragraph 16(b). EPA will set  
8 forth in the notice a schedule for performance of such activities consistent with the Consent Decree  
9 or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant  
10 to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants  
11 shall perform all activities described in the notice in accordance with the specifications and  
12 schedules established pursuant to this Paragraph, subject to their right to invoke the dispute  
13 resolution procedures set forth in Section XIX (Dispute Resolution).

14 b. If EPA concludes, based on the initial or any subsequent report requesting  
15 Certification of Completion and upon consultation with the Commonwealth, that the Remedial  
16 Action has been performed in accordance with this Consent Decree and that the Performance  
17 Standards have been achieved, EPA will so certify in writing to Settling Defendants. This  
18 certification shall constitute the Certification of Completion of the Remedial Action for purposes  
19 of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by  
20 Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling  
21 Defendants' obligations under this Consent Decree.

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1           54. Completion of the Work

2           a. Within ninety (90) days after Settling Performing Defendants conclude that all  
3 phases of the Work (including O & M), have been fully performed, Settling Performing  
4 Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling  
5 Performing Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the  
6 Settling Performing Defendants still believe that the Work has been fully performed, Settling  
7 Performing Defendants shall submit to EPA and the Commonwealth a written report by a  
8 registered professional engineer stating that the Work has been completed in full satisfaction of the  
9 requirements of this Consent Decree. The report shall contain the following statement, signed by a  
10 Duly Authorized Representative of a Settling Performing Defendant or the Settling Performing  
11 Defendants' Project Coordinator:

12           “To the best of my knowledge, after thorough investigation, I certify that the  
13 information contained in or accompanying this submission is true, accurate and  
14 complete. I am aware that there are significant penalties for submitting false  
15 information, including the possibility of fine and imprisonment for knowing  
16 violations.”

17 If, after review of the written report, EPA determines, upon consultation with the Commonwealth,  
18 that any portion of the Work has not been completed in accordance with this Consent Decree, EPA  
19 will notify Settling Performing Defendants in writing of the activities that must be undertaken by  
20 Settling Performing Defendants pursuant to this Consent Decree to complete the Work. Provided,  
21 however, that EPA may only require Settling Performing Defendants to perform such activities  
22 pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the  
23 remedy selected in the ROD,” as that term is defined in Paragraph 16(b). EPA will set forth in the



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1 notice a schedule for performance of such activities consistent with the Consent Decree or require  
2 the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section  
3 XI (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall  
4 perform all activities described in the notice in accordance with the specifications and schedules  
5 established therein, subject to their right to invoke the dispute resolution procedures set forth in  
6 Section XIX (Dispute Resolution).

7 b. If EPA concludes, based on the initial or any subsequent request for Certification  
8 of Completion by Settling Performing Defendants and upon consultation with the Commonwealth,  
9 that the Work has been performed in accordance with this Consent Decree, EPA will so notify the  
10 Settling Defendants in writing.

#### 11 **XV. EMERGENCY RESPONSE**

12 55. In the event of any action or occurrence during the performance of the Work which  
13 causes or threatens a release of Waste Material from the Site that constitutes an emergency  
14 situation or may present an immediate threat to public health or welfare or the environment,  
15 Settling Performing Defendants shall, subject to Paragraph 56, immediately take all appropriate  
16 action to prevent, abate, or minimize such release or threat of release, and shall immediately notify  
17 EPA's and the Commonwealth's Project Coordinators, and, if the Project Coordinators are  
18 unavailable, EPA's and the Commonwealth's Alternate Project Coordinators. In the event both of  
19 EPA's designated representatives are unavailable, the Settling Performing Defendants shall notify  
20 the EPA Region III Hotline at (215) 814-3255. Settling Performing Defendants shall take such  
21 actions in consultation with EPA's Project Coordinator or other available authorized EPA officer



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1 and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency  
2 Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In  
3 the event that Settling Performing Defendants fail to take appropriate response action as required  
4 by this Section, and EPA and/or the Commonwealth takes such action instead, Settling Performing  
5 Defendants shall reimburse EPA and/or the Commonwealth all costs of the response action not  
6 inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

7 56. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit  
8 any authority of the United States or the Commonwealth to (a) take all appropriate action to protect  
9 human health and the environment or to prevent, abate, respond to, or minimize an actual or  
10 threatened release of Waste Material on, at, or from the Site, or (b) direct or order such action, or  
11 seek an order from the Court, to protect human health and the environment or to prevent, abate,  
12 respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site,  
13 subject to Section XXI (Covenants Not to Sue by Plaintiffs).

#### 14 **XVI. PAYMENTS FOR RESPONSE COSTS**

##### 15 57. Payments for Past Response Costs.

16 a. EPA has determined that Settling Defendants are entitled to Orphan Share  
17 consideration, as that term is defined in EPA's Interim Guidance for Settlers of Remedial  
18 Design/Remedial Action and Non-Time Critical Removals in the amount of \$1,613,234.72.  
19 Within thirty (30) days of the Effective Date, Settling Performing Defendants shall pay to EPA, on  
20 behalf of all Settling Defendants, Past Response Costs in the amount of \$3,037,491.61 in payment  
21 for the remainder of EPA's Past Response Costs. Payment shall be made by FedWire Electronic

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1 Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT  
2 procedures, referencing USAO File Number 1997V01636, EPA Site/Spill ID No. 03BD, and DOJ  
3 Case Number DJ#90-11-3-1762. Payment shall be made in accordance with instructions provided  
4 to the Settling Performing Defendants by the Financial Litigation Unit of the United States  
5 Attorney’s Office for the Western District of Pennsylvania following lodging of the Consent  
6 Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will  
7 be credited on the next business day. Settling Performing Defendants shall send notice that such  
8 payment has been made to the United States as specified in Section XXVI (Notices and  
9 Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency,  
10 1650 Arch Street, Philadelphia, PA 19103. At the time of payment, Settling Performing  
11 Defendants shall send copies of the check(s) to the United States as specified in Section XXVI  
12 (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental  
13 Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be  
14 paid by Settling Defendants pursuant to Subparagraph shall be deposited in the Breslube-Penn  
15 Special Account within the EPA Hazardous Substance Superfund to be retained and used to  
16 conduct or finance response actions at or in connection with the Site, or to be transferred by EPA  
17 to the EPA Hazardous Substance Superfund.

18 b. Within thirty (30) days of the Effective Date, Settling Performing Defendants  
19 shall pay to the Commonwealth \$41,356.04, on behalf of all Settling Defendants, in the form of a  
20 certified or cashier’s check or checks made payable to the Commonwealth of Pennsylvania, in  
21 reimbursement of the Commonwealth’s Past Response Costs. The Settling Performing Defendants

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1 shall send the certified or cashier's check to Dawna Saunders, Project Manager, Environmental  
2 Cleanup Program, Pennsylvania Department of Environmental Protection, Southwest Regional  
3 Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. The check and an accompanying cover  
4 letter shall specify the name of the site, its location and that the costs are being reimbursed  
5 pursuant to this Consent Decree.

6 c. As negotiated and memorialized in a written agreement between Settling  
7 Performing Defendants and Settling Non-Performing Defendants, each Settling Non-Performing  
8 Defendant shall pay to Settling Performing Defendants, within thirty (30) days after their  
9 individual execution of this Consent Decree, all monies necessary to satisfy any claims Settling  
10 Performing Defendants may have under, inter alia, Sections 106, 107 or 113 of CERCLA for  
11 response actions or response costs pursuant to this Consent Decree. Specifically, each Settling  
12 Non-Performing Defendant has agreed to pay the amount listed next to its name in Appendix D,  
13 which amounts total \$4,332,421.42. In the event a Settling Non-Performing Defendant fails to  
14 make timely payment under this Paragraph 57, such Settling Non-Performing Defendant shall pay  
15 Interest on the unpaid balance to Settling Performing Defendants, or as provided under a separate  
16 agreement between the Settling Non-Performing Defendants and the Settling Performing  
17 Defendants.

18 58. Payments for Future Response Costs.

19 a. Settling Performing Defendants shall pay to EPA all Future Response Costs not  
20 inconsistent with the National Contingency Plan. On a periodic basis, the United States will send  
21 Settling Performing Defendants a bill requiring payment that includes a cost summary, setting forth

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1 direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Performing  
2 Defendants shall make all payments within forty five (45) days of Settling Performing Defendants'  
3 receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. Settling  
4 Performing Defendants shall make all payments required by this Paragraph by a certified or  
5 cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and  
6 referencing the name and address of the party making the payment, EPA Site/Spill ID No. 03BD,  
7 and DOJ Case Number DJ#90-11-3-1762. Settling Performing Defendants shall send the check(s)  
8 to United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance  
9 Center, P.O. Box 979076, St. Louis, MO 63197-9000, and shall send copies of the check(s) to the  
10 United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk  
11 (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street,  
12 Philadelphia, PA 19103. The total amount to be paid by Settling Performing Defendants pursuant  
13 to Subparagraph 58 shall be deposited in the Breslube-Penn Special Account within the EPA  
14 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at  
15 or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance  
16 Superfund.

17 b. Settling Performing Defendants shall reimburse the Commonwealth for all of the  
18 Commonwealth's Future Response Costs not inconsistent with the National Contingency Plan.  
19 The Commonwealth will send Settling Performing Defendants a bill requiring payment that  
20 includes a cost summary on a periodic basis. Settling Performing Defendants shall make all  
21 payments within thirty (30) days of Settling Performing Defendants' receipt of each bill requiring

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1 payment, except as otherwise provided in this Paragraph. The Settling Performing Defendants  
2 shall make all payments to the Commonwealth required by this Paragraph in the manner described  
3 in Paragraph 57.b.

4 59. Settling Performing Defendants may contest payment of any Future Response Costs  
5 under Paragraph 58 if they determine that the United States or the Commonwealth has made an  
6 accounting error or if they allege that a cost item that is included represents costs that are  
7 inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of  
8 the bill and must be sent to the United States (if the United State's accounting is being disputed) or  
9 the Commonwealth (if the Commonwealth's accounting is being disputed) pursuant to Section  
10 XXVI (Notices and Submissions). Any such objection shall specifically identify the contested  
11 Future Response Costs and the basis for objection. In the event of an objection, the Settling  
12 Performing Defendants shall within the 30 day period pay all uncontested Future Response Costs  
13 to the United States or the Commonwealth in the manner described in Paragraph 58.

14 Simultaneously, the Settling Performing Defendants shall establish an interest-bearing escrow  
15 account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and  
16 remit to that escrow account funds equivalent to the amount of the contested Future Response  
17 Costs. The Settling Performing Defendants shall send to the United States, as provided in Section  
18 XXVI (Notices and Submissions) and the Commonwealth, a copy of the transmittal letter and  
19 check paying the uncontested Future Response Costs, and a copy of the correspondence that  
20 establishes and funds the escrow account, including, but not limited to, information containing the  
21 identity of the bank and bank account under which the escrow account is established as well as a

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1 bank statement showing the initial balance of the escrow account. Simultaneously with  
2 establishment of the escrow account, the Settling Performing Defendants shall initiate the dispute  
3 resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the  
4 dispute, within 5 days of the resolution of the dispute, the Settling Performing Defendants shall pay  
5 the sums due (with accrued interest) to the United States in the manner described in Paragraph 58.  
6 If the Settling Performing Defendants prevail concerning any aspect of the contested costs, the  
7 Settling Performing Defendants shall pay that portion of the costs (plus associated accrued interest)  
8 for which they did not prevail to the United States in the manner described in Paragraph 58;  
9 Settling Performing Defendants shall be disbursed any balance of the escrow account. The dispute  
10 resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in  
11 Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes  
12 regarding the Settling Performing Defendants' obligation to reimburse the United States and the  
13 Commonwealth for their Future Response Costs.

14 60. In the event that the payments required by Subparagraph 57 are not made within thirty  
15 (30) days of the Effective Date or the payments required by Paragraph 58 are not made within  
16 thirty (30) days of the Settling Performing Defendants' receipt of the bill, Settling Performing  
17 Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response  
18 Costs and Commonwealth Past Response Costs under this Paragraph shall begin to accrue on the  
19 Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill.  
20 The Interest shall accrue through the date of the Settling Performing Defendants' payment.  
21 Payments of Interest made under this Paragraph shall be in addition to such other remedies or

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1 sanctions available to Plaintiffs by virtue of Settling Performing Defendants' failure to make timely  
2 payments under this Section including, but not limited to, payment of stipulated penalties pursuant  
3 to Paragraph 75. The Settling Performing Defendants shall make all payments required by this  
4 Paragraph in the manner described in Paragraph 58.

5 **XVII. INDEMNIFICATION AND INSURANCE**

6 61. a. The United States and the Commonwealth do not assume any liability by entering  
7 into this agreement or by virtue of any designation of Settling Performing Defendants as EPA's  
8 authorized representatives under Section 104(e) of CERCLA. Settling Performing Defendants  
9 shall indemnify, save, and hold harmless the United States, the Commonwealth and their officials,  
10 agents, employees, contractors, subcontractors, or representatives for or from any and all claims or  
11 causes of action arising from, or on account of, negligent or other wrongful acts or omissions of  
12 Settling Performing Defendants, their officers, directors, employees, agents, contractors,  
13 subcontractors, and any persons acting on their behalf or under their control, in carrying out  
14 activities pursuant to this Consent Decree, including, but not limited to, any claims arising from  
15 any designation of Settling Performing Defendants as EPA's authorized representatives under  
16 Section 104(e) of CERCLA. Further, the Settling Performing Defendants agree to pay the United  
17 States and the Commonwealth all costs they incur including, but not limited to, attorneys fees and  
18 other expenses of litigation and settlement arising from, or on account of, claims made against the  
19 United States or the Commonwealth based on negligent or other wrongful acts or omissions of  
20 Settling Performing Defendants, their officers, directors, employees, agents, contractors,  
21 subcontractors, and any persons acting on their behalf or under their control, in carrying out



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1 activities pursuant to this Consent Decree. Neither the United States nor the Commonwealth shall  
2 be held out as a party to any contract entered into by or on behalf of Settling Performing  
3 Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling  
4 Performing Defendants nor any such contractor shall be considered an agent of the United States or  
5 the Commonwealth.

6 b. The United States and the Commonwealth shall give Settling Performing  
7 Defendants notice of any claim for which the United States and/or the Commonwealth plan to seek  
8 indemnification for pursuant to Paragraph 61(a), and shall consult with Settling Performing  
9 Defendants prior to settling such claim.

10 62. Settling Performing Defendants waive all claims against the United States and the  
11 Commonwealth for damages or reimbursement or for set-off of any payments made or to be made  
12 to the United States or the Commonwealth, arising from or on account of any contract, agreement,  
13 or arrangement between any one or more of Settling Performing Defendants and any person for  
14 performance of Work on or relating to the Site, including, but not limited to, claims on account of  
15 construction delays. In addition, Settling Performing Defendants shall indemnify and hold  
16 harmless the United States and the Commonwealth with respect to any and all claims for damages  
17 or reimbursement arising from or on account of any contract, agreement, or arrangement between  
18 any one or more of Settling Performing Defendants and any person for performance of Work on or  
19 relating to the Site, including, but not limited to, claims on account of construction delays.

20 63. No later than fifteen (15) days before commencing any on-site Work, Settling  
21 Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's



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1 Certification of Completion of the Remedial Action pursuant to Paragraph 53(b) of Section XIV  
2 (Certification of Completion)] comprehensive general liability insurance with limits of five million  
3 dollars, combined single limit, and automobile liability insurance with limits of \$500,000,  
4 combined single limit, naming the United States and the Commonwealth as an additional insured.  
5 In addition, for the duration of this Consent Decree, Settling Performing Defendants shall satisfy,  
6 or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations  
7 regarding the provision of worker's compensation insurance for all persons performing the Work  
8 on behalf of Settling Performing Defendants in furtherance of this Consent Decree. Prior to  
9 commencement of the Work under this Consent Decree, Settling Performing Defendants shall  
10 provide to EPA and the Commonwealth certificates of such insurance and a copy of each insurance  
11 policy. Settling Performing Defendants shall resubmit such certificates and copies of policies each  
12 year on the anniversary of the Effective Date of this Consent Decree. If Settling Performing  
13 Defendants demonstrate by evidence satisfactory to EPA and the Commonwealth that any  
14 contractor or subcontractor maintains insurance equivalent to that described above, or insurance  
15 covering the same risks but in a lesser amount, then, with respect to that contractor or  
16 subcontractor, Settling Performing Defendants need provide only that portion of the insurance  
17 described above which is not maintained by the contractor or subcontractor.

#### 18 **XVIII. FORCE MAJEURE**

19 64. "Force majeure," for purposes of this Consent Decree, is defined as any event arising  
20 from causes beyond the control of the Settling Performing Defendants, of any entity controlled by  
21 Settling Performing Defendants, or of Settling Performing Defendants' contractors, that delays or

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1 prevents the performance of any obligation under this Consent Decree despite Settling Performing  
2 Defendants' best efforts to fulfill the obligation. The requirement that the Settling Performing  
3 Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate  
4 any potential force majeure event and best efforts to address the effects of any potential force  
5 majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that  
6 the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial  
7 inability to complete the Work, a failure to attain the Performance Standards, or increased costs.

8 65. If any event occurs or has occurred that may delay the performance of any obligation  
9 under this Consent Decree, whether or not caused by a force majeure event, the Settling  
10 Performing Defendants shall notify orally EPA's and the Commonwealth's Project Coordinators  
11 or, in his or her absence, EPA's and the Commonwealth's Alternate Project Coordinators. In the  
12 event both of EPA's designated representatives are unavailable, the Director of the EPA Region III  
13 Hazardous Site Cleanup Division, within forty-eight (48) hours of when Settling Performing  
14 Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling  
15 Performing Defendants shall provide in writing to EPA and the Commonwealth an explanation and  
16 description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to  
17 be taken to prevent or minimize the delay; a schedule for implementation of any measures to be  
18 taken to prevent or mitigate the delay or the effect of the delay; the Settling Performing Defendants'  
19 rationale for attributing such delay to a force majeure event if they intend to assert such a claim;  
20 and a statement as to whether, in the opinion of the Settling Performing Defendants, such event  
21 may cause or contribute to an endangerment to public health, welfare or the environment. The

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1 Settling Performing Defendants shall include with any notice all available documentation  
2 supporting their claim that the delay was attributable to a force majeure. Failure to comply with  
3 the above requirements shall preclude Settling Performing Defendants from asserting any claim of  
4 force majeure for that event for the period of time of such failure to comply, and for any additional  
5 delay caused by such failure. Settling Performing Defendants shall be deemed to know of any  
6 circumstance of which Settling Performing Defendants, any entity controlled by Settling  
7 Performing Defendants, or Settling Performing Defendants' contractors knew or should have  
8 known.

9 66. If EPA, upon consultation with the Commonwealth, agrees that the delay or  
10 anticipated delay is attributable to a force majeure event, the time for performance of the  
11 obligations under this Consent Decree that are affected by the force majeure event will be extended  
12 by EPA, upon consultation with the Commonwealth, for such time as is necessary to complete  
13 those obligations on an expedited basis. An extension of the time for performance of the  
14 obligations affected by the force majeure event shall not, of itself, extend the time for performance  
15 of any other obligation. If EPA, upon consultation with the Commonwealth, does not agree that the  
16 delay or anticipated delay has been or will be caused by a force majeure event, EPA, upon  
17 consultation with the Commonwealth, will notify the Settling Performing Defendants in writing of  
18 its decision. If EPA, upon consultation with the Commonwealth, agrees that the delay is  
19 attributable to a force majeure event, EPA will notify the Settling Performing Defendants in  
20 writing of the length of the extension, if any, for performance of the obligations affected by the  
21 force majeure event.

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1 67. If the Settling Performing Defendants elect to invoke the dispute resolution procedures  
2 set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after  
3 receipt of EPA's notice. In any such proceeding, Settling Performing Defendants shall have the  
4 burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has  
5 been or will be caused by a force majeure event, that the duration of the delay or the extension  
6 sought was or will be warranted under the circumstances, that best efforts were exercised to avoid  
7 and mitigate the effects of the delay, and that Settling Performing Defendants complied with the  
8 requirements of Paragraphs 64 and 65, above. If Settling Performing Defendants carry this burden,  
9 the delay at issue shall be deemed not to be a violation by Settling Performing Defendants of the  
10 affected obligation of this Consent Decree identified to EPA and the Court.

#### 11 **XIX. DISPUTE RESOLUTION**

12 68. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution  
13 procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or  
14 with respect to this Consent Decree. However, the procedures set forth in this Section shall not  
15 apply to actions by the United States to enforce obligations of the Settling Performing Defendants  
16 that have not been disputed in accordance with this Section. There shall be no dispute resolution  
17 or any other judicial review of (1) EPA's selection of the components of the remedy, as set forth in  
18 the ROD at pages 38-46, Section 12, "Selected Remedy," including but not limited to the  
19 Contingent Remedial Action 1 and/or 2; (2) any refusal or failure by EPA to declare failure of the  
20 WMACS or the EMBA Remedial Action or the EMBA Remedial Action Operation and  
21 Maintenance; and (3) any other matters for which this Decree expressly states there will be no  
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1 dispute resolution or judicial review.

2 69. Any dispute, except as provided in under paragraph 68, which arises under or with  
3 respect to this Consent Decree shall in the first instance be the subject of informal negotiations  
4 between the parties to the dispute. The period for informal negotiations shall not exceed twenty  
5 (20) days from the time the dispute arises, unless it is modified by written agreement of the parties  
6 to the dispute. The dispute shall be considered to have arisen when one party sends the other  
7 parties a written Notice of Dispute.

8 70. a. In the event that the parties cannot resolve a dispute by informal negotiations under  
9 the preceding Paragraph, then the position advanced by EPA shall be considered binding unless,  
10 within ten (10) days after the conclusion of the informal negotiation period, Settling Performing  
11 Defendants invoke the formal dispute resolution procedures of this Section by serving on the  
12 United States and the Commonwealth a written Statement of Position on the matter in dispute,  
13 including, but not limited to, any factual data, analysis or opinion supporting that position and any  
14 supporting documentation relied upon by the Settling Performing Defendants. The Statement of  
15 Position shall specify the Settling Performing Defendants' position as to whether formal dispute  
16 resolution should proceed under Paragraph 71 or Paragraph 72.

17 b. Within fourteen (14) days after receipt of Settling Performing Defendants'  
18 Statement of Position, upon consultation with the Commonwealth, EPA will serve on Settling  
19 Performing Defendants its Statement of Position, including, but not limited to, any factual data,  
20 analysis, or opinion supporting that position and all supporting documentation relied upon by EPA.  
21 EPA's Statement of Position shall include a statement as to whether formal dispute resolution

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1 should proceed under Paragraph 71 or 72. Within seven (7) days after receipt of EPA's Statement  
2 of Position, Settling Performing Defendants may submit a Reply.

3 c. If there is disagreement between EPA and the Settling Performing Defendants as  
4 to whether dispute resolution should proceed under Paragraph 71 or 72, the parties to the dispute  
5 shall follow the procedures set forth in the Paragraph determined by EPA to be applicable.

6 However, if the Settling Performing Defendants ultimately appeal to the Court to resolve the  
7 dispute, the Court shall determine which Paragraph is applicable in accordance with the standards  
8 of applicability set forth in Paragraphs 71 and 72.

9 71. Formal dispute resolution for disputes pertaining to the selection or adequacy of any  
10 response action and all other disputes that are accorded review on the administrative record under  
11 applicable principles of administrative law shall be conducted pursuant to the procedures set forth  
12 in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes,  
13 without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or  
14 any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the  
15 performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent  
16 Decree shall be construed to allow any dispute by Settling Performing Defendants regarding the  
17 validity of the ROD's provisions.

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

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1           b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue  
2 a final administrative decision resolving the dispute based on the administrative record described in  
3 Paragraph 71(a). This decision shall be binding upon the Settling Performing Defendants, subject  
4 only to the right to seek judicial review pursuant to Paragraph 71(c) and (d).

5           c. Any administrative decision made by EPA pursuant to Paragraph 71(b) shall be  
6 reviewable by this Court, provided that a motion for judicial review of the decision is filed by the  
7 Settling Performing Defendants with the Court and served on all Parties within ten (10) days of  
8 receipt of EPA's decision. The motion shall include a description of the matter in dispute, the  
9 efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which  
10 the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United  
11 States may file a response to Settling Performing Defendants' motion.

12           d. In proceedings on any dispute governed by this Paragraph, Settling Performing  
13 Defendants shall have the burden of demonstrating that the decision of the Director of the  
14 Hazardous Site Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in  
15 accordance with law. Judicial review of EPA's decision shall be on the administrative record  
16 compiled pursuant to Paragraph 71(a).

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

20           a. Following receipt of Settling Performing Defendants' Statement of Position  
21 submitted pursuant to Paragraph 70, the Director of the Hazardous Site Cleanup Division, EPA

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1 Region III, upon consultation with the Commonwealth, will issue a final decision resolving the  
2 dispute. The Director's decision shall be binding on the Settling Performing Defendants unless,  
3 within ten (10) days of receipt of the decision, the Settling Performing Defendants file with the  
4 Court and serve on the parties a motion for judicial review of the decision setting forth the matter  
5 in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if  
6 any, within which the dispute must be resolved to ensure orderly implementation of the Consent  
7 Decree. The United States may file a response to Settling Performing Defendants' motion.

8 b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree,  
9 judicial review of any dispute governed by this Paragraph shall be governed by applicable  
10 principles of law.

11 73. The invocation of formal dispute resolution procedures under this Section shall not  
12 extend, postpone, or affect in any way any obligation of the Settling Performing Defendants under  
13 this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated  
14 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed  
15 pending resolution of the dispute as provided in Paragraph 82. Notwithstanding the stay of  
16 payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable  
17 provision of this Consent Decree. In the event that the Settling Performing Defendants do not  
18 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section



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XX (Stipulated Penalties).

**XX. STIPULATED PENALTIES**

74. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 75 and 76 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure).

“Compliance” by Settling Performing Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

75. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 3,500.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 5,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 8,000.00	31 <sup>st</sup> day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Performing Defendants), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payments for Response Costs).

76. a. The following stipulated penalties shall accrue per violation per day for any

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noncompliance identified in Subparagraph b:

<b><i>Penalty Per Violation Per Day</i></b>	<b><i>Period of Noncompliance</i></b>
\$ 1,000.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 2,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 3,000.00	31 <sup>st</sup> day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 72(b) of this Consent Decree.

77. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Performing Defendants shall be liable for a stipulated penalty in the amount of \$200,000.

78. 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 XI (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 Performing Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 71(b) or 72(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Defendants' 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

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1 judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the  
2 period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding  
3 the dispute until the date that the Court issues a final decision regarding such dispute. Nothing  
4 herein shall prevent the simultaneous accrual of separate penalties for separate violations of this  
5 Consent Decree.

6 79. Following EPA's determination that Settling Performing Defendants have failed to  
7 comply with a requirement of this Consent Decree, EPA may give Settling Performing Defendants  
8 written notification of the same and describe the noncompliance. EPA may send the Settling  
9 Performing Defendants a written demand for the payment of the penalties. However, penalties  
10 shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the  
11 Settling Performing Defendants of a violation.

12 80. All penalties accruing under this Section shall be due and payable to the United States  
13 within thirty (30) days of the Settling Performing Defendants' receipt from EPA of a demand for  
14 payment of the penalties, unless Settling Performing Defendants invoke the dispute resolution  
15 procedures under Section XIX (Dispute Resolution). All payments to the United States under this  
16 Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous  
17 Substances Superfund," shall be mailed to the United States Environmental Protection Agency,  
18 Superfund Payment, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000,  
19 shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and  
20 Site/Spill ID #03BD, the DOJ Case Number DJ#90-11-3-1762, and the name and address of the  
21 party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying

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1 transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and  
2 Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency,  
3 Region III, 1650 Arch Street, Philadelphia, PA 19103.

4 81. The payment of penalties shall not alter in any way Settling Performing Defendants'  
5 obligation to complete the performance of the Work required under this Consent Decree.

6 82. Penalties shall continue to accrue as provided in Paragraph 78 during any dispute  
7 resolution period, but need not be paid until the following:

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

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

15 c. If the District Court's decision is appealed by any Party, Settling Performing  
16 Defendants shall pay all accrued penalties determined by the District Court to be owing to the  
17 United States into an interest-bearing escrow account within sixty (60) days of receipt of the  
18 Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at  
19 least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision,  
20 the escrow agent shall pay the balance of the account to EPA and the Commonwealth or to Settling  
21 Performing Defendants to the extent that they prevail.

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1           83.     a. If Settling Performing Defendants fail to pay stipulated penalties when due, the  
2 United States may institute proceedings to collect the penalties, as well as interest. Settling  
3 Performing Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the  
4 date of demand made pursuant to Paragraph 80.

5           b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
6 any way limiting the ability of the United States to seek any other remedies or sanctions available  
7 by virtue of Settling Performing Defendants' violation of this Decree or of the statutes and  
8 regulations upon which it is based, including, but not limited to, penalties pursuant to Section  
9 122(l) of CERCLA. Provided, however, that for any particular violation of this Consent Decree,  
10 the United States shall be limited to either demanding stipulated penalties pursuant to this Section  
11 XX of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA,  
12 except in the case of a willful violation of the Consent Decree.

13           84. Notwithstanding any other provision of this Section, the United States may, in its  
14 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to  
15 this Consent Decree.

16                           **XXI. COVENANTS NOT TO SUE BY PLAINTIFFS**

17                           Covenant Not to Sue by Plaintiff United States

18           85. In consideration of the actions that will be performed and the payments that will be  
19 made by the Settling Defendants under the terms of the Consent Decree, and except as specifically  
20 provided in Paragraphs 86, 87, and 89 of this Section, the United States covenants not to sue or to  
21 take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of

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1 CERCLA relating to the Site. As to the Settling Performing Defendants, the covenants not to sue  
2 set forth in this Paragraph shall take effect upon Certification of Completion of Remedial Action  
3 by EPA pursuant to Paragraph 53(b) of Section XIV (Certification of Completion). As to the  
4 Settling Non-Performing Defendants, the covenants not to sue set forth in this Paragraph shall take  
5 effect, as to each Settling Non-Performing Defendant, upon both of the following: (i) the receipt by  
6 EPA and the State of the payments required by Paragraph 57.a and 57.b of Section XVI (Payments  
7 for Response Costs); and (ii) receipt by the Settling Performing Defendants of the payments  
8 required by Paragraph 57.c of Section XVI (Payments for Response Costs). The covenant not to  
9 sue Settling Performing Defendants is conditioned upon the satisfactory performance by Settling  
10 Performing Defendants of their obligations under this Consent Decree. The covenant not to sue  
11 each of the Settling Non-Performing Defendants is conditioned upon the satisfactory performance  
12 by that Settling Non-Performing Defendant of its obligations under this Consent Decree. These  
13 covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

14 86. Plaintiffs' Pre-Certification Reservations. Notwithstanding any other provision of this  
15 Consent Decree, the United States and the Commonwealth reserve, and this Consent Decree is  
16 without prejudice to, the right to institute proceedings in this action or in a new action, or to issue  
17 an administrative order seeking to compel Settling Defendants (1) to perform further response  
18 actions relating to the Site or (2) to reimburse the United States or the Commonwealth for  
19 additional costs of response if, prior to Certification of Completion of the Remedial Action:

- 20 (i) conditions at the Site, previously unknown to EPA or the Commonwealth,  
21 are discovered, or

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- 1 (ii) information, previously unknown to EPA or the Commonwealth, is  
2 received, in whole or in part,

3 and EPA determines upon consultation with the Commonwealth that these previously unknown  
4 conditions or information together with any other relevant information indicates that the Remedial  
5 Action is not protective of human health or the environment.

6 87. Plaintiffs' Post-Certification Reservations. Notwithstanding any other provision of this  
7 Consent Decree, the United States and the Commonwealth reserve, and this Consent Decree is  
8 without prejudice to, the right to institute proceedings in this action or in a new action, or to issue  
9 an administrative order seeking to compel Settling Defendants (1) to perform further response  
10 actions relating to the Site or (2) to reimburse the United States or the Commonwealth for  
11 additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- 12 (i) conditions at the Site, previously unknown to EPA or the Commonwealth,  
13 are discovered, or

- 14 (ii) information, previously unknown to EPA or the Commonwealth, is  
15 received,

16 in whole or in part,

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

20 88. For purposes of Paragraph 86, the information and the conditions known to EPA and  
21 the Commonwealth shall include only that information and those conditions known to EPA and the

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1 Commonwealth as of the date the ROD was signed and set forth in the Record of Decision for the  
2 Site and the administrative record supporting the Record of Decision. For purposes of Paragraph  
3 87, the information and the conditions known to EPA and the Commonwealth shall include only  
4 that information and those conditions known to EPA and the Commonwealth as of the date of  
5 Certification of Completion of the Remedial Action and set forth in the Record of Decision, the  
6 administrative record supporting the Record of Decision, the post-ROD administrative record, or in  
7 any information received by EPA and the Commonwealth pursuant to the requirements of this  
8 Consent Decree prior to Certification of Completion of the Remedial Action.

9 89. General reservations of rights. The covenants not to sue set forth above do not pertain  
10 to any matters other than those expressly specified in Paragraph 85. The United States and the  
11 Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Settling  
12 Defendants with respect to all matters not expressly included within Plaintiffs' covenant not to sue.  
13 Notwithstanding any other provision of this Consent Decree, the United States and the  
14 Commonwealth reserve all rights against Settling Defendants with respect to:

- 15 (1) claims based on a failure by Settling Defendants to meet a requirement of this  
16 Consent Decree;
- 17 (2) liability arising from the past, present, or future disposal, release, or threat of  
18 release of Waste Material outside of the Site;
- 19 (3) liability based upon the Settling Defendants' ownership or operation of the Site,  
20 or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the  
21 arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in



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1 connection with the Site, other than as provided in the ROD, the Work, or otherwise  
2 ordered by EPA or the Commonwealth, after signature of this Consent Decree by the  
3 Settling Defendants;

4 (4) liability for damages for injury to, destruction of, or loss of natural resources,  
5 and for the costs of any natural resource damage assessments;

6 (5) criminal liability;

7 (6) liability for violations of federal or state law which occur during or after  
8 implementation of the Remedial Action; and

9 (7) liability, prior to Certification of Completion of the Remedial Action,  
10 for additional response actions that EPA determines are necessary to achieve  
11 Performance Standards, but that cannot be required pursuant to Paragraph 16  
12 (Modification of the Work);

13 (8) liability for additional operable units at the Site or the final response action;

14 (9) liability for costs incurred or to be incurred by the Agency for Toxic Substances  
15 and Disease Registry related to the Site.

16 90. Work Takeover.

17 (a) In the event EPA determines that Settling Performing Defendants have (i) ceased  
18 implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in  
19 their performance of the Work, or (iii) are implementing the Work in a manner which may cause  
20 an endangerment to human health or the environment, EPA may issue a written notice ("Work  
21 Takeover Notice") to the Settling Performing Defendants. Any Work Takeover Notice issued by

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1 EPA will specify the grounds upon which such notice was issued and will provide Settling  
2 Performing Defendants a period of 10 days within which to remedy the circumstances giving rise  
3 to EPA's issuance of such notice.

4 (b) If, after expiration of the 10-day notice period specified in Paragraph 90(a),  
5 Settling Performing Defendants have not remedied to EPA's satisfaction the circumstances giving  
6 rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter  
7 assume the performance of all or any portions of the Work as EPA deems necessary ("Work  
8 Takeover"). EPA shall notify Settling Performing Defendants in writing (which writing may be  
9 electronic) if EPA determines that implementation of a Work Takeover is warranted under this  
10 Paragraph 90(b).

11 (c) Settling Performing Defendants may invoke the procedures set forth in Section  
12 XIX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph  
13 90(b). However, notwithstanding Settling Performing Defendants' invocation of such dispute  
14 resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion  
15 commence and continue a Work Takeover under Paragraph 90(b) until the earlier of

16 (i) the date that Settling Performing Defendants remedy, to EPA's  
17 satisfaction, the circumstances giving rise to EPA's issuance of the relevant  
18 Work Takeover Notice or (ii) the date that a final decision is rendered in  
19 accordance with Section XIX (Dispute Resolution) requiring EPA to  
20 terminate such Work Takeover.

21 (d) After commencement and for the duration of any Work Takeover, EPA shall

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1 have immediate access to and benefit of any performance guarantee(s) provided pursuant to  
2 Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 51 of that  
3 Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such  
4 performance guarantee(s) and the Settling Performing Defendant(s) fail to remit a cash amount up  
5 to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance  
6 with the provisions of Paragraph 51, any unreimbursed costs incurred by EPA in performing Work  
7 under the Work Takeover shall be considered Future Response Costs that Settling Performing  
8 Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

9 91. Notwithstanding any other provision of this Consent Decree, the United States and the  
10 Commonwealth retain all authority and reserve all rights to take any and all response actions  
11 authorized by law.

12 Covenant Not to Sue by Plaintiff Commonwealth of Pennsylvania.

13 92. The Commonwealth covenants not to sue or to take administrative action against  
14 Settling Defendants, pursuant to CERCLA, HSCA, or any other state or federal statutory or  
15 common law, for response costs incurred or to be incurred; for response actions, including, without  
16 limitation, prompt interim and/or remedial response actions; or for injunctive relief arising from  
17 the identified release or threatened release of hazardous substances at the Site. As to the Settling  
18 Performing Defendants, the covenants not to sue set forth in this Paragraph shall take effect upon  
19 Certification of Completion of Remedial Action by EPA pursuant to Paragraph 53(b) of Section  
20 XIV (Certification of Completion). As to the Settling Non-Performing Defendants, the covenants  
21 not to sue set forth in this Paragraph shall take effect, as to each Settling Non-Performing

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1 Defendant, upon both of the following: (i) the receipt by the Commonwealth of the payments  
2 required by Paragraph 57.b of Section XVI (Payments for Response Costs); and (ii) receipt by the  
3 Settling Performing Defendants of the payments required by Paragraph 57.c of Section XVI  
4 (Payments for Response Costs). The Commonwealth's covenant not to sue Settling Performing  
5 Defendants is conditioned upon the satisfactory performance by Settling Performing Defendants of  
6 their obligations under this Consent Decree. The Commonwealth's covenant not sue each of the  
7 Settling Non-Performing Defendants is conditioned upon the satisfactory performance by that  
8 Settling Non-Performing Defendant of its obligations under this Consent Decree.

9 **XXII. COVENANTS BY SETTLING DEFENDANTS**

10 93. Covenant Not to Sue. Subject to the reservations in Paragraph 93, Settling Defendants  
11 hereby covenant not to sue and agree not to assert any claims or causes of action against the United  
12 States or the Commonwealth with respect to the Site or this Consent Decree, including, but not  
13 limited to:

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

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

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

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1 at common law. Except as provided in Paragraph 95(a) (Waiver of Claims Against De Micromis  
2 Parties), Paragraph 95(b) (Waiver of Claims Against *De Minimis* Parties), and Paragraph 100  
3 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that  
4 the United States brings a cause of action or issues an order pursuant to the reservations set forth in  
5 Paragraphs 86, 87, 89(2) - (4) or 89(7) - (11), but only to the extent that Settling Defendants'  
6 claims arise from the same response action, response costs, or damages that the United States is  
7 seeking pursuant to the applicable reservation.

8 94. The Settling Defendants reserve, and this Consent Decree is without prejudice to,  
9 claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United  
10 States Code, for money damages for injury or loss of property or personal injury or death caused by  
11 the negligent or wrongful act or omission of any employee of the United States while acting within  
12 the scope of his or her office or employment under circumstances where the United States, if a  
13 private person, would be liable to the claimant in accordance with the law of the place where the  
14 act or omission occurred. However, any such claim shall not include a claim for any damages  
15 caused, in whole or in part, by the act or omission of any person, including any contractor, who is  
16 not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim  
17 include a claim based on EPA's selection of response actions, or the oversight or approval of the  
18 Settling Performing Defendants' plans or activities. The foregoing applies only to claims which are  
19 brought pursuant to any statute other than CERCLA and for which the waiver of sovereign  
20 immunity is found in a statute other than CERCLA.

21 95. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a

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1 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.

2 § 300.700(d).

3 96. a. Settling Defendants agree not to assert any claims and to waive all claims or  
4 causes of action that they may have for all matters relating to the Site, including for contribution,  
5 against any person where the person's liability to Settling Defendants with respect to the Site is  
6 based solely on having arranged for disposal or treatment, or for transport for disposal or treatment,  
7 of hazardous substances at the Site, or having accepted for transport for disposal or treatment of  
8 hazardous substances at the Site if the materials contributed by such person to the Site containing  
9 hazardous substances are 2200 gallons or less. This waiver shall not apply to any claim or cause of  
10 action against any person meeting the above criteria if EPA has determined that the materials  
11 contributed to the Site by such person contributed or could contribute significantly to the costs of  
12 response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause  
13 of action that a Settling Defendant may have against any person if such person asserts a claim or  
14 cause of action relating to the Site against such Settling Defendant.

15 b. Settling Defendants agree not to assert any claims and to waive all claims or  
16 causes of action that they may have for all matters relating to the Site, including for contribution,  
17 against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA  
18 with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any  
19 defense, claim, or cause of action that a Settling Defendant may have against any person if such  
20 person asserts a claim or cause of action relating to the Site against such Settling Defendant.

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**XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

1  
2 97. Except as provided in Paragraph 95(a) (Waiver of Claims Against De Micromis  
3 Parties) and Paragraph 95(b) (Waiver of Claims Against De Minimis Parties), nothing in this  
4 Consent Decree shall be construed to create any rights in, or grant any cause of action to, any  
5 person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive  
6 or nullify any rights that any person not a signatory to this decree may have under applicable law.  
7 Except as provided in Paragraph 95(a) (Waiver of Claims Against De Micromis Parties) and  
8 Paragraph 95(b) (Waiver of Claims Against De Minimis Parties), each of the Parties expressly  
9 reserves any and all rights (including, but not limited to, any right to contribution), defenses,  
10 claims, demands, and causes of action which each Party may have with respect to any matter,  
11 transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

12 98. The Parties agree, and by entering this Consent Decree this Court finds, that the  
13 Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or  
14 claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), Section 705(c)(2) of  
15 HSCA, 35 P.S. § 6020.705(c)(2); and Section 501(a) of Act 2, 35 P.S. § 6026.501(a), for matters  
16 addressed in this Consent Decree. Nothing herein shall prevent Settling Defendants from suing  
17 one another for failing to comply with the terms of the existing agreement between the Settling  
18 Performing Defendants and the Settling Non-Performing Defendants with respect to any private  
19 agreement to fund the Work or perform the Work or perform other obligations under this Consent  
20 Decree.

21 99. The Settling Defendants agree that with respect to any suit or claim for contribution

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1 brought by them for matters related to this Consent Decree they will notify the United States and  
2 the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or  
3 claim.

4 100. The Settling Defendants also agree that with respect to any suit or claim for  
5 contribution brought against them for matters related to this Consent Decree they will notify in  
6 writing the United States and the Commonwealth within ten (10) days of service of the complaint  
7 on them. In addition, Settling Defendants shall notify the United States and the Commonwealth  
8 within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10)  
9 days of receipt of any order from a court setting a case for trial.

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

18 **XXIV. ACCESS TO INFORMATION**

19 102. Settling Performing Defendants shall provide to EPA and the Commonwealth, upon  
20 request, copies of all documents and information within their possession or control or that of their  
21 contractors or agents relating to activities at the Site or to the implementation of this Consent



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1 Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests,  
2 trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or  
3 information related to the Work. Settling Performing Defendants shall also make available to EPA  
4 and the Commonwealth, for purposes of investigation, information gathering, or testimony, their  
5 employees, agents, or representatives with knowledge of relevant facts concerning the performance  
6 of the Work.

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

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

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

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

9 **XXV. RETENTION OF RECORDS**

10 105. Until ten (10) years after the Settling Performing Defendants' receipt of EPA's  
11 notification pursuant to Paragraph 53(b) of Section XIV (Certification of Completion of the Work),  
12 each Settling Defendant shall preserve and retain all non-identical copies of records and documents  
13 (including records or documents in electronic form) now in its possession or control or which come  
14 into its possession or control that relate in any manner to its liability under CERCLA with respect  
15 to the Site, provided, however, that Settling Defendants who are potentially liable as owners or  
16 operators of the Site must retain, in addition, all documents and records that relate to the liability of  
17 any other person under CERCLA with respect to the Site. Each Settling Performing Defendant  
18 must also retain, and instruct its contractors and agents to preserve, for the same period of time  
19 specified above, all non-identical copies of the last draft or final version of any documents or  
20 records (including documents or records in electronic form) now in its possession or control or  
21 which come into its possession or control that relate in any manner to the performance of the

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1 Work, provided, however, that each Settling Performing Defendant (and its contractors and agents)  
2 must retain, in addition, copies of all data generated during the performance of the Work and not  
3 contained in the aforementioned documents required to be retained. Each of the above record  
4 retention requirements shall apply regardless of any corporate retention policy to the contrary.

5 106. At the conclusion of this document retention period, Settling Performing Defendants  
6 shall notify the United States and the Commonwealth at least ninety (90) days prior to the  
7 destruction of any such records or documents, and, upon request by the United States, Settling  
8 Performing Defendants shall deliver any such records or documents to EPA. If the United States  
9 has not responded to Settling Performing Defendants' notice prior to the time Settling Performing  
10 Defendants intend to destroy the records or documents, Settling Performing Defendants shall  
11 deliver all such records and documents to EPA no earlier than ten (10) days after providing an  
12 additional written notice that such records and documents will be delivered, unless EPA provides  
13 otherwise after receiving such notice. The Settling Performing Defendants may assert that certain  
14 documents, records and other information are privileged under the attorney-client privilege or any  
15 other privilege recognized by federal law. If the Settling Performing Defendants assert such a  
16 privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record,  
17 or information; (2) the date of the document, record, or information; (3) the name and title of the  
18 author of the document, record, or information; (4) the name and title of each addressee and  
19 recipient; (5) a description of the subject of the document, record, or information; and (6) the  
20 privilege asserted by Settling Performing Defendants. However, no documents, reports, or other  
21 information created or generated pursuant to the requirements of the Consent Decree shall be

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1 withheld on the grounds that they are privileged.

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

9 **XXVI. NOTICES AND SUBMISSIONS**

10 108. Whenever, under the terms of this Consent Decree, written notice is required to be  
11 given or a report or other document is required to be sent by one Party to another, it shall be  
12 directed to the individuals at the addresses specified below, unless those individuals or their  
13 successors give notice of a change to the other Parties in writing. All notices and submissions shall  
14 be considered effective upon receipt, unless otherwise provided. Written notice as specified herein  
15 shall constitute complete satisfaction of any written notice requirement of the Consent Decree with  
16 respect to the United States, EPA, the Commonwealth, and the Settling Defendants, respectively.

17 **As to the United States:**

18 Chief, Environmental Enforcement Section  
19 Environment and Natural Resources Division  
20 U.S. Department of Justice  
21 P.O. Box 7611  
22 Washington, D.C. 20044-7611  
23 Re: DJ#90-11-3-1762

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1 Jefferie Garcia  
2 Senior Assistant Regional Counsel (3RC42)  
3 United States Environmental Protection Agency  
4 Region III  
5 1650 Arch Street  
6 Philadelphia, PA 19103

7 As to EPA:

8 Bhupendra Khona (3HS22)  
9 EPA Project Coordinator  
10 United States Environmental Protection Agency  
11 Region III  
12 1650 Arch Street  
13 Philadelphia, PA 19103

14 Linda Dietz  
15 Alternate EPA Project Coordinator  
16 United States Environmental Protection Agency  
17 Region III  
18 1650 Arch Street  
19 Philadelphia, PA 19103

20 As to the Commonwealth:

21 Dawna Saunders  
22 Commonwealth Project Coordinator  
23 Pennsylvania Department of Environmental Protection  
24 400 Waterfront Drive  
25 Pittsburgh, PA 15222-4745

26 Barbara Gunter  
27 Alternate Commonwealth Project Coordinator  
28 Pennsylvania Department of Environmental Protection  
29 400 Waterfront Drive  
30 Pittsburgh, PA 15222-4745

31 As to the Settling Defendants:

32 Leo M. Brausch, P.E.  
33 Consulting Environmental Engineer

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1 131 Wedgewood Drive  
2 Gibsonia, PA 15044-9795

3 Thomas C. Gricks  
4 Schnader  
5 Fifth Avenue Place  
6 120 Fifth Avenue, Suite 2700  
7 Pittsburgh, PA 15222-3001

8 **XXVII. EFFECTIVE DATE**

9 109. The effective date of this Consent Decree shall be the date upon which this Consent  
10 Decree is entered by the Court, except as otherwise provided herein.

11 **XXVIII. RETENTION OF JURISDICTION**

12 110. This Court retains jurisdiction over both the subject matter of this Consent Decree and  
13 the Settling Defendants for the duration of the performance of the terms and provisions of this  
14 Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for  
15 such further order, direction, and relief as may be necessary or appropriate for the construction or  
16 modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to  
17 resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

18 **XXIX. APPENDICES**

19 111. The following appendices are attached to and incorporated into this Consent Decree:

20 “Appendix A” is the Cost Summary for the Site referred to in the definition of “Past  
21 Response Costs”.

22 “Appendix B” is the Draft Easement.

23 “Appendix C” is the ROD.

24 “Appendix D” is the list of Settling Non-Performing Defendants.  
25

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1 “Appendix E” is the list of Settling Performing Defendants.

2 “Appendix F” is the Cost Summary for the Site referred to in the definition of “Past  
3 Response Costs”.

4 “Appendix G” is an example of a Performance Guarantee.

5 “Appendix H” is an example of a CFO letter.

6 **XXX. COMMUNITY RELATIONS**

7 112. Settling Performing Defendants shall propose to EPA and the Commonwealth their  
8 participation in the community relations plan to be developed by EPA. EPA will determine the  
9 appropriate role for the Settling Performing Defendants under the Plan. Settling Performing  
10 Defendants shall also cooperate with EPA and the Commonwealth in providing information  
11 regarding the Work to the public. As requested by EPA, Settling Performing Defendants shall  
12 participate in the preparation of such information for dissemination to the public and in public  
13 meetings which may be held or sponsored by EPA or the Commonwealth to explain activities at or  
14 relating to the Site.

15 **XXXI. MODIFICATION**

16 113. Schedules specified in this Consent Decree for completion of the Work may be  
17 modified by agreement of the EPA Project Coordinator (upon consultation with the  
18 Commonwealth) and the Settling Performing Defendants. All such modifications shall be made in  
19 writing.

20 114. Except as otherwise provided in this Paragraph, no modifications shall be made to  
21 provisions of this Consent Decree without written notification to and written approval of the

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1 United States, Settling Performing Defendants, and the Court. Prior to providing its approval to  
2 any modification to the provisions of this Consent Decree, the United States will consult with the  
3 Commonwealth on the proposed modification. Modifications to the Remedial Design Work Plan,  
4 Remedial Action Work Plan, and if required by EPA, the Contingent Remedial Design/Contingent  
5 Remedial Action Work Plan 1 and/or 2 and any other plan approved by EPA under this Consent  
6 Decree that do not materially alter the requirements of those documents may be made by written  
7 agreement between the EPA Project Coordinator, after consulting with the Commonwealth on the  
8 proposed modification, and the Settling Performing Defendants. Modifications to the Work made  
9 pursuant to Paragraph 16 (“Modification of the Work”) may be made by EPA. Nothing in this  
10 Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications  
11 to this Consent Decree.

#### 12 **XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

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

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



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**XXXIII. SIGNATORIES/SERVICE**

1  
2 117. Each undersigned representative of a Settling Defendant to this Consent Decree and  
3 the Assistant Attorney General for the Environment and Natural Resources Division of the  
4 Department of Justice certifies that he or she is fully authorized to enter into the terms and  
5 conditions of this Consent Decree and to execute and legally bind such Party to this document.

6 118. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by  
7 this Court or to challenge any provision of this Consent Decree unless the United States has  
8 notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

9 119. Each Settling Defendant shall identify, on the attached signature page, the name,  
10 address, and telephone number of an agent who is authorized to accept service of process by mail  
11 on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.  
12 Settling Defendants hereby agree to accept service in that manner and to waive the formal service  
13 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local  
14 rules of this Court, including, but not limited to, service of a summons. The parties agree that  
15 Settling Defendants need not file an answer to the Complaint in this action unless or until the court  
16 expressly declines to enter this Consent Decree.

17 **XXXIV. FINAL JUDGMENT**

18 120. This Consent Decree and its appendices constitute the final, complete, and exclusive  
19 agreement and understanding among the parties with respect to the settlement embodied in the  
20 Consent Decree. The parties acknowledge that there are no representations, agreements, or  
21 understandings relating to the settlement other than those expressly contained in this Consent

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

1 Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall  
2 constitute a final judgment between and among the United States, the Commonwealth, and the  
3 Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this  
4 judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

5 **SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.**

6  
7 \_\_\_\_\_  
8 Honorable Joy Flowers Conti  
United States District Judge

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

**THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.**

**FOR THE UNITED STATES OF AMERICA**

\_\_\_\_\_  
JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division

6/1/09  
DATE

\_\_\_\_\_  
MARCELLO MOLLO  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-2757

5/12/09  
DATE

MARY BETH BUCHANAN  
United States Attorney  
Western District of Pennsylvania

\_\_\_\_\_  
JESSICA LIEBER SMOLAR  
Assistant United States Attorney  
Western District of Pennsylvania  
U.S. Post Office and Courthouse  
700 Grant Street, Suite 400  
Pittsburgh, PA 15219

6/1/09  
DATE

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

1 **THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States**  
2 **v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.**

3 **FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.**

4  
5 WILLIAM C. EARLY  
6 Acting Regional Administrator, Region III  
7 U.S. Environmental Protection Agency  
8 1650 Arch Street  
9 Philadelphia, PA 19103

5/27/09  
DATE

10  
11 JUDY KATZ  
12 Acting Regional Counsel  
13 U.S. Environmental Protection Agency, Region III  
14 1650 Arch Street  
15 Philadelphia, PA 19103

5-12-09  
DATE

16  
17 JEPPERIE GARCIA  
18 MARY E. RUGALA  
19 Assistant Regional Counsel  
20 U.S. Environmental Protection Agency, Region III  
21 1650 Arch Street  
22 Philadelphia, PA 19103

5-12-09  
DATE

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

1 ***THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States***  
2 ***v. AK Steel Corporation, et al., relating to the Breslube Penn Superfund Site.***

3 **FOR THE COMMONWEALTH OF PENNSYLVANIA,**  
4 **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

5  
6 David E. Eberle  
7 Regional Manager  
8 Environmental Cleanup Program  
9 Southwest Region

10  
11 

---

Edward S. Stokan, Esq.  
12 Attorney for the Department

***United States v. AK Steel, et. al***  
***Remedial Design/Remedial Action Consent Decree***

---

**FOR: AK Steel Corporation**

***^***  
***[Signature]***

Name: David C. Horn  
Title: Senior Vice President and General Counsel  
Address: 9227 Centre Pointe Drive  
West Chester, OH 45069

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

***Please Type the Following:***

Name: John J. Kuzman, Jr.  
Title: Chief Compliance Officer and Assistant General Counsel  
Address: 9227 Centre Pointe Drive  
West Chester, OH 45069  
Telephone: 513-425-5224

***\*/*** A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

1 FOR ALCOA INC. ~~XXXXXXXXXX~~  
2

3  
4 Signature

5 *Insert the Following:*

6 Name: Ronald D. Dickel

7 Title: Vice President

8 Address: 201 Isabella Street, Pittsburgh, PA 15212

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

10 *Please Type the Following:*

11 Name: John A. Sheehan

12 Title: Senior Attorney

13 Address: Hunton & Williams  
951 East Byrd Street  
Richmond, Virginia 23219

14 Telephone: (804) 787-8150  
15  
16

17 \*/ A separate signature page must be signed by each corporation, individual or other legal  
18 entity that is settling with the United States.





***United States v. AK Steel, et. al***  
***Remedial Design/Remedial Action Consent Decree***

---

**FOR: ELLIOTT COMPANY**

Date: March 16, 2009

\_\_\_\_\_  
***[Signature]***

Name: William K. Cox  
Title: Vice President, General Counsel  
and Secretary  
Address: 901 North Fourth Street  
Jeannette, PA 15644-1473

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

***Please Type the Following:***

Name: Joseph R. Brendel, Esquire  
Title: Counsel for Elliott Company  
Address: Thorp Reed & Armstrong, LLP  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425  
Telephone: 412-394-2373  
Facsimile: 412-394-2555

***\*/*** A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

{00978969}

**FOR: Exxon Mobil Corporation** (on behalf of itself and its current and former subsidiaries and affiliates)\*

---

*[Signature]*

*Insert the Following:*

Name: Michael W. Schwehr  
Title: Manager, Major Projects, EMES  
Agent and Attorney-in-Fact  
Address: 3225 Gallows Road  
Room 8B0202  
Fairfax, Virginia 22037  
Phone: (703) 846-1702

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

*Please Type the Following:*

Name: Corporation Service Company  
Address: 2704 Commerce Drive  
Harrisburg, Pennsylvania 17110  
Telephone: (717) 234-9715

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

United States v. AK Steel, et. al  
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---

**FOR FORD MOTOR COMPANY:**

\_\_\_\_\_  
*[Signature]*

Name: Louis J. Ghilardi

Title: Assistant Secretary

Address: ONE AMERICAN ROAD, DEARBORN, MI 48126

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

*Please Type the Following:*

Name: David J. Witten

Title: Attorney, Office of the General Counsel, Ford Motor Company

Address: One American Road, Room 407-A2, DEARBORN, MI 48126

Telephone: (313) 845-8476

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

**FOR :** General Motors Corporation

---

*[Signature]*

Name: James P. Walle, P31198

Title: Attorney, General Motors Legal Staff

Address: 300 Renaissance Center, Mail Code 482-C24-D24  
Detroit, Michigan 48265-3000

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

*Please Type the Following:*

Name: CT Corporation

Title: Process Agent

Address: 30600 Telegraph Rd., Bingham Farms, MI 48025

Telephone: 248.646.9033

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

**FOR: HUSSEY COPPER LTD.,** for and  
on behalf of itself and its general partner,  
HUSSEY COPPER CORP.

Date: March 10, 2009

*[Signature]*

Name: Mr. Roy D. Allen

Title: President and CEO of Hussey Copper Corp.,  
General Partner of Hussey Copper Ltd.

Address: 100 Washington Street  
Leetsdale, PA 15056

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

*Please Type the Following:*

Name: Joseph R. Brendel, Esquire

Title: Counsel for Hussey Copper Ltd.

Address: Thorp Reed & Armstrong, LLP  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, PA 15219-1425

Telephone: 412-394-2373

Facsimile: 412-394-2555

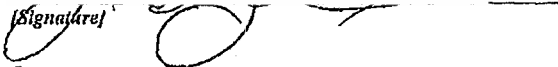
*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

{00976977}

*United States v. AK Steel, et. al*  
Remedial Design/Remedial Action Consent Decree

FOR \_\_\_\_\_ COMPANY, INC.:\*

United States Steel Corporation (formerly known as United States Steel, LLC  
and USX Corporation)

*(Signature)* 

Insert the Following:

Name: James D. Garraux

Title: General Counsel and Sr. Vice President of  
Labor Relations and Environmental Affairs

Address: United States Steel Corporation  
600 Grant Street, Suite 6100  
Pittsburgh, PA 15219-2800

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

Please Type the Following:

Name: Andrew G. Thiros

Title: Attorney - Environmental

Address: United States Steel Corporation  
600 Grant Street, Suite 1500, Pittsburgh, PA 15219-2800

Telephone: 412-433-2983

\*/ A separate signature page must be signed by each corporation, individual or other legal  
entity that is settling with the United States.

**United States v. AK Steel, et. al**  
**Remedial Design/Remedial Action Consent Decree**

---

**FOR: ALL-CLAD METALCRAFTERS LLC**

*[Signature]*

Name: Jose Augusto P. Oliveira

Title: President & Chief Executive Officer

Address: 424 Morganza Road  
Canonsburg, PA 15317

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

***Please Type the Following:***

Name: Jose Augusto P. Oliveira

Title: President & Chief Executive Officer

Address: 424 Morganza Road  
Canonsburg, PA 15317

Telephone: (724)745-8300

**\*/** A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et al*  
*Remedial Design/Remedial Action Consent Decree*

---

FOR \_\_\_\_\_ COMPANY, INC.\*  
AMERICAN REFINING GROUP, INC.

\_\_\_\_\_  
*[Signature]*

*Insert the Following:*

Name: John Trinkl

Title: Senior Vice President

Address: 100 Four Falls Corporate Center, Suite 215  
West Conshohocken, PA 19428

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

*Please Type the Following:*

Name: Daniel P. Trocchio

Title: Outside Counsel

Address: Henry W. Oliver Bldg., 535 Smithfield Street  
Pittsburgh, PA 15222

Telephone: (412) 355-6284

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.



*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

BP Products North America Inc.  
FOR ~~COMPANY USE~~

[Signature]

Insert the Following:

Name:

Patrick King

Title:

President & COO

Address:

501 Westlake Park Blvd.  
Houston, TX 77079

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

Please Type the Following:

Name:

John C. Laager

Title:

Ballard Spahr Andrews & Ingersoll, LLP

Address:

1735 Market Street, Philadelphia, PA 19103

Telephone:

(215) 665-8500

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

United States v. AK Steel, et al  
Remedial Design/Remedial Action Consent Decree

FOR Atlantic Richfield Company  
~~XXXXXXXXXXXX~~

(Signature) ✓

Insert the Following:

Name: Patrick King

Title: President & COO

Address: 501 Westlake Park Blvd  
Houston, TX 77079

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

Please Type the Following:

Name: John C. Laager

Title: Ballard Spahr Andrews & Ingersoll, LLP

Address: 1735 Market Street, Philadelphia, PA 19103

Telephone: (215) 665-8500

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
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FOR Englefield, Inc., d/b/a Englefield Oil Company, Buckeye Lake Truck Stop

[Signature]

Insert the Following:

Name: FW Englefield IV

Title: President

Address: 447 James Parkway  
Heath, Ohio 43056

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

Please Type the Following:

Name: Frank J. Reed, Jr.  
(O.S. Ct 0055234)

Title: Attorney at Law

Address: 41 South High Street, Suite 2600  
Columbus, Ohio 43215

Telephone: (614) 223-9304

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*

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**FOR CHEVRON U.S.A. INC.:**

\_\_\_\_\_  
*[Signature]*

Name: **Kathryn L. Beck**

Title: **Assistant Secretary**

Address: **6001 Bollinger Canyon Rd  
San Ramon, CA 94583**

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

*Please Type the Following:*

Name: Corporation Service Company

Title: \_\_\_\_\_

Address: 2704 Commerce Drive, Harrisburg, PA 17110

Telephone: 800 222 2122

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*

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**FOR TEXACO INC.:**

\_\_\_\_\_  
*[Signature]*

Name: **Kathryn L. Beck**

Title: **Assistant Secretary**

Address: **6001 Bollinger Canyon Rd  
San Ramon, CA 94583**

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

*Please Type the Following:*

Name: Corporation Service Company

Title: \_\_\_\_\_

Address: 2704 Commerce Drive, Harrisburg, PA 17110

Telephone: 800 222 2122

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

Consolidated Rail Corporation  
FOR \_\_\_\_\_ COMPANY, INC.:\*

(Signature) \_\_\_\_\_

*Insert the Following:*

Name: Jonathan M. Broder

Title: VP-General Counsel & Corp. Secretary

1717 Arch Street, 32nd Floor  
Address: Philadelphia, PA 19103

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

*Please Type the Following:*

Name: Jonathan M. Broder

Title: VP-General Counsel & Corp. Secretary

1717 Arch Street, 32nd Floor  
Address: Philadelphia, PA 19103

Telephone: 215-209-5020

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
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---

**FOR: CONTINENTAL TIRE NORTH AMERICA, INC.**

*[Signature]*

Name: George R. Jurch, III  
Title: General Counsel and Secretary  
Address: 1830 MacMillian Park Drive  
Fort Mill, SC 29707

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

*Please Type the Following:*

Name: CT Corporation  
Title: Process Agent  
Address: 116 Pine Street  
Suite 320  
Harrisburg, PA 17101  
Telephone: 717-234-6004

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
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---

**FOR: CROUSE FORD SALES INC.**

---

*[Signature]*

Name: Kenneth D. Crouse  
Title: President  
Address: 11 Antrim Boulevard  
Taneytown, MD 21787

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

*Please Type the Following:*

Name: Kenneth D. Crouse  
Title: President  
Address: 11 Antrim Boulevard  
Taneytown, MD 21787  
Telephone: 410-756-6655

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.







*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

1 **FOR DTC Environmental Services, Inc.**  
2

3 ( \_\_\_\_\_  
4 *[Signature]* /

5 *Insert the Following:*

6 Name: JAMES R Reed JR

7 Title: PRESIDENT

8 Address: 2567 Congo-Arroyo Rd  
Newell, WV. 26050

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

10 *Please Type the Following:*

11 Name: \_\_\_\_\_

12 Title: \_\_\_\_\_

13 Address: \_\_\_\_\_

14 Telephone: \_\_\_\_\_  
15

16 *\*/* A separate signature page must be signed by each corporation, individual or other legal  
17 entity that is settling with the United States.  
18

United States v. AK Steel, et. al  
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---

**FOR: Environmental Oil, Inc.**

\_\_\_\_\_  
*[Signature]*

Name: \_\_\_\_\_ Al Staiti \_\_\_\_\_

Title: \_\_\_\_\_ Indemnitor \_\_\_\_\_

Address: \_\_\_\_\_ c/o Authorized Agent (see below) \_\_\_\_\_

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

*Please Type the Following:*

Name: \_\_\_\_\_ Christopher Staiti \_\_\_\_\_

Title: \_\_\_\_\_ Attorney for Indemnitor \_\_\_\_\_

Address: Stevens & Staiti, LLP  
1401 Madison Park Drive  
Glen Burnie, Maryland 21061

Telephone: \_\_\_\_\_ (410) 787-1123 \_\_\_\_\_

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

**FOR GENERAL ELECTRIC COMPANY:**

*[Signature]*

Name: Todd Wyman

Title: Vice President Global Supply Chain

Address: 2901 East Lake Road  
Building 14-5  
Erie, PA 16531

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

*Please Type the Following:*

Name: Russell S. Warner, Esquire

Title: Attorney for General Electric Company

Address: MacDonald, Illig, Jones & Britton LLP  
100 State Street, Suite 700  
Erie, PA 16507-1459

Telephone: (814) 870-7759

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.



***United States v. AK Steel, et. al***  
***Remedial Design/Remedial Action Consent Decree***

---

**FOR GORDON TERMINAL SERVICE CO., OF PA:**

***[Signature]***  \_\_\_\_\_

Name: Timothy H. Gordon

Title: Vice President

Address: P.O. Box 313, Agnes Street, McKees Rocks, PA, 15136

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

***Please Type the Following:***

Name: Timothy H. Gordon

Title: Vice President

Address: P.O. Box 313, Agnes Street, McKees Rocks, PA, 15136

Telephone: 412-331-9410

**\*/** A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

---

**FOR J. C. Penney Corporation, Inc. f/k/a J. C. Penney Company, Inc.**

*[Signature]* \_\_\_\_\_

Name: Aman Zahiruddin

Title: Senior Counsel

Address: J. C. Penney Corporation, Inc.  
6501 Legacy Drive, MS 1119  
Plano, Texas 75024-3698

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

*Please Type the Following:*

Name: Aman Zahiruddin

Title: Senior Counsel

Address: J. C. Penney Corporation, Inc., 6501 Legacy Drive, MS 1119, Plano, Texas 75024-3698

Telephone: (972) 431-1256

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.



**FOR JERRY'S CHEVROLET, INC.:**

*[Signature]*

**Name:** Gail Wallace

**Title:** Secretary and Treasurer

**Address:** 1940 E. Joppa Road  
Baltimore, MD 21234

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

**Name:** Lloyd D. Lurie

**Title:** Attorney

**Address:** 200 E. Lexington Street, Suite 1300  
Baltimore, MD 21202

**Telephone:** 410-837-8000

United States v. All Steel, et al.  
Remedial Action/Remedial Action Consent Decree

FOR Miller Motors, Inc., a dissolved Maryland corporation

*Signature* W M PASZYNSKI

Insert the Following:

Name: W M PASZYNSKI

Title: C. M. / Pres  
As Authorized Director

Address: c/o Ober, Kaler, Grimes & Shriver  
120 E. Baltimore Street  
Baltimore, MD 21202

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

Please Type the Following:

Name: Marc K. Cohen

Title: Esquire

Address: Ober, Kaler, Grimes & Shriver  
120 E. Baltimore Street, Baltimore, MD 21202

Telephone: 410-647-7663

\* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
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---

**FOR: The OWL CORPORTION**

*[Signature]*

Name: F. Thomas Leyden

Title: President

Address: 1900 Graves Court, Dundalk, MD 21222

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

***Please Type the Following:***

Name: Maureen E. Murphy, Esquire

Title: Attorney

Address: 14 North Rolling Rd., Catonsville, MD 21228

Telephone: 410-744-4967

**\*/** A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

United States v. AK Steel, et. al  
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**FOR Park Circle Motor Company f/d/b/a  
Legum Chevrolet**

**[Signature]** \_\_\_\_\_

Name: Thomas J. Kanwacki

Title: Treasurer

Address: 1829 Reisterstown Road, Suite 140  
Balto. MD. 21208

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

***Please Type the Following:***

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.**

*United States v. AK Steel, et. al*  
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---

**FOR: PARR OF VIRGINIA, INC. T/A  
T/A COURTESY CHRYSLER/JEEP  
FORMERLY T/A COURTESY AMC/JEEP**

*Signature* \_\_\_\_\_

Name: Christopher Zourdos

Title: President

Address: 755 ROCKVILLE PIKE ROCKVILLE, MD.  
20852

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

*Please Type the Following:*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

**FOR PENNZOIL-QUAKER STATE COMPANY**

*[Signature]* \_\_\_\_\_

Name: William C. Records  
Vice President  
Title: Supply Chain Operations  
Pennzoil Quaker State Company  
Address: DBA SOPUS Products  
700 Milam Street  
Houston, Tx 77002

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

Name: The Corporation Trust Company  
Address: 1209 Orange Street  
Corporation Trust Center  
Wilmington DE 19801  
Telephone: 866/925-9916

*United States v. AK Steel, et. al*  
Remedial Design/Remedial Action Consent Decree

**FOR Port Authority of Allegheny County**

*[Signature]*

*Insert the Following:*

Name: Michael J. Cetra, Esquire

Title: General Counsel

Address: 345 Sixth Avenue, 3rd Floor, Pittsburgh, PA 15222

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

*Please Type the Following:*

Name: Michael J. Cetra, Esquire

Title: General Counsel

Address: 345 Sixth Avenue, 3rd Floor, Pittsburgh, PA 15222

Telephone: 412-566-5245

*\*/* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

**FOR QUALITY CARRIERS, INC. (Successor to O'Boyle Tank Lines):**

*[Signature]*

**Name:**

James A. Rakitsky 

**Title:**

Vice President, Environmental Services

**Address:**

c/o Quality Distribution, Inc.  
150 E. Pennsylvania Ave., Suite 430  
Downingtown, PA 19335

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

**Name:**

Bonni F. Kaufman, Esq.

**Title:**

Attorney

**Address:**

Holland + Knight  
2099 Pennsylvania Avenue, NW  
Washington, DC 20006

**Telephone:**

202-419-2547

# 6291846\_v1



**FOR INVENSYS CONTROLS AMERICAS  
f/k/a Robertshaw Controls Company**

\_\_\_\_\_  
*[Signature]*

*Insert the Following:*

Name: Timothy J. Dolan

Title: Vice President

Address: c/o McGuire Woods, One James Center, 901 East Cary Street, Richmond VA 23219

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

*Please Type the Following:*

Name: Timothy J. Dolan

Title: Vice President

Address: c/o McGuire Woods, One James Center, 901 East Cary Street, Richmond, VA 23219

Telephone: 804-644-7791

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

**FOR SHELL OIL COMPANY**

\_\_\_\_\_  
*[Signature]*

Name: William E. Platt, III

Title: Senior Manager, Discontinued Operations

Address: 910 Louisiana, Suite 664, Houston, TX 77002

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

Name: The Corporation Trust Company

Address: 1209 Orange Street  
Corporation Trust Center  
Wilmington DE 19801

Telephone: 866/925-9916

**FOR SHENANGO INCORPORATED.:**\*

\_\_\_\_\_  
*[Signature]*

*Insert the Following:*

Name: Gerald S. Endler

Title: Senior Vice President and General Counsel

Address: 414 S. Main Street, Suite 600, Ann Arbor, MI 48104

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

*Please Type the Following:*

Name: Gerald S. Endler

Title: Senior Vice President and General Counsel

Address: 414 S. Main Street, Suite 600, Ann Arbor, MI 48104

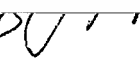
Telephone: (734) 302-4894

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

*United States v. AK Steel, et. al*  
*Remedial Design/Remedial Action Consent Decree*

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FOR Swartz Cadillac COMPANY, INC.:\*

(Signature) 

*Insert the Following:*

Name: George Hader

Title: Senior Managing Director

Address: 10400 York Road, Cockeysville, MD 21030

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

*Please Type the Following:*

Name: Chelsey L. Moscati, Esquire

Title: Attorney

Address: 233 E. Redwood Street, Baltimore, MD 21202

Telephone: (410) 576-4222

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.