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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCATEL-LUCENT USA INC., AS  
SUCCESSOR IN INTEREST TO AT&T INC.,  
OLIN CORPORATION, AND PFIZER, INC.,

Defendants.

Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

**CONSENT DECREE FOR RECOVERY OF PAST AND FUTURE RESPONSE COSTS**

**I. BACKGROUND**

A. EPA, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9601-9675, and the National Contingency Plan ("NCP"), as amended, 40 C.F.R. Part 300, has performed a number of response actions relating to the Heleva Landfill Site, located in North Whitehall Township, Lehigh County, Pennsylvania ("the Site"), including but not limited to, overseeing the Remedial Design, Remedial Action and Operation and Maintenance at the Site as well as issuance of two Records of Decision and two Five Year Reviews.

B. In 1985, EPA signed a Record of Decision ("1985 ROD") selecting a remedy for the Site. The remedy included, inter alia, extending an existing municipal water main to serve nearby residences, capping the landfill, constructing surface water diversion and gas venting systems, pumping and treating the near-gradient groundwater to reduce the source of groundwater contamination, and performing monitoring and further studies. EPA completed all of the remedial measures called for in the 1985 ROD, with the exception of the groundwater treatment components. In 1991, EPA signed a ROD Amendment ("1991 ROD Amendment"), which altered the remedy selected in the 1985 ROD by requiring the pumping and treating of both the near-gradient groundwater to contain the dissolved plume and the down-gradient groundwater to restore that portion of the aquifer to useability. The 1991 ROD Amendment also required institutional controls to restrict access to those portions of the aquifer which remain above remediation goals.

C. Following unsuccessful negotiations for a Remedial Design/Remedial Action ("RD/RA") Consent Decree, EPA ultimately issued the following four orders and three amendments to those orders related to the remedial action at the Site:

1. On March 22, 1993, EPA and the Site owners, Stephen D. Heleva, Lois Heleva, Arthur J. Heleva, and Mary Ann Klugh, as co-trustees of the Stephen D. and Lois M. Heleva Trust, entered into an Administrative Order on Consent for Access ("Access Order"), Docket No. III-93-29-DC. The Access Order granted EPA and its designated representatives entry and access to a portion of the Site, which was the subject of an irrevocable inter vivos trust agreement, in order to continue performing the remedial action that had already been initiated at the Site.

2. On June 30, 1993, EPA issued an Administrative Order for Operation and Maintenance ("O&M Order"), Docket No. III-93-34-DC, to the following fourteen (14) respondents: Arthur J. Heleva and Mary Ann Klugh as trustees of the Steven D. and Lois M. Heleva Trust, Steven D. Heleva, Lois M. Heleva, Heleva Land Fill, Inc., Air Products and Chemicals, Inc., American Nickeloid Company, American Telephone and Telegraph Company ("AT&T"), General Electric Company, Howmet Cericast (U.S.A.), Inc., Olin Corporation, Pennsylvania Power and Light Company, Robert J. Mcauliffe, Inc. and Robert J. Mcauliffe. The O&M Order required the fourteen (14) respondents to perform O&M at the Site in accordance with the 1985 ROD, the 1991 ROD Amendment, CERCLA, the NCP, and the requirements and schedules specified in the O&M Order itself.

3. Also on June 30, 1993, EPA issued an Administrative Order for Remedial Action ("RA Order"), Docket No. III-93-42-DC, to the following seven respondents: Arthur J. Heleva and Mary Ann Klugh as trustees of the Steven D. and Lois M. Heleva Trust, Steven D. Heleva, Lois M. Heleva, Heleva Land Fill, Inc., AT&T, and Olin Corporation. The RA Order requires the seven respondents to perform the remedial action in accordance with the 1985 ROD, the 1991 ROD Amendment, CERCLA, the NCP, the requirements and schedules specified in the RA Order, and conduct O&M.

4. On March 8, 1994, EPA issued an Amended Administrative Order for Remedial Action ("Amended RA Order"), Docket No. III-93-42-D C, to the same seven defendants listed above. The RA Order requires the seven respondents to implement the remedial design, the ROD Amendment, the portion of the ROD relevant to the surface water pump station, CERCLA, the NCP, the requirements and schedules specified in the Amended RA Order, and

conduct O&M. EPA issued the Amended RA Order to coincide with an administrative consent order being negotiated at the time between certain parties for remedial design. The effective date of the Amended RA Order was conditioned upon the entry of such administrative consent order between EPA and "the appropriate defendants."

5. On June 21, 1994, EPA issued an Administrative Order on Consent for Remedial Design ("RD Order"), Docket No. III-94-19-DC, to the following two respondents: AT&T and Olin Corporation. This RD Order required the Respondents to expedite commencement and performance of the Remedial Design to implement the remedy as set forth in the 1991 Amended ROD. The Amended RA Order also became effective this date.

6. On April 25, 1995, EPA amended the O&M Order ("O&M Amendment") to change EPA's role with respect to the Health and Safety Plan.

7. On April 11, 1996, the RA Order was further amended to clarify the statement of work to be performed and to provide flexibility with respect to the location of the connection of the surface water pump station discharge to the ground water treatment plant.

D. On March 15, 1993, the United States filed a complaint against fourteen (14) defendants alleging that they were liable pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and requesting a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for reimbursement of the United States' past response costs incurred in connection with the Site. The fourteen (14) defendants were classified as follows:

1. Seven generator defendants: Air Products and Chemicals, Inc., American Nickeloid Company, The American Telephone and Telegraph Company ("AT&T"), General

Electric Company, Howmet Cercast (U.S.A.), Inc., Olin Corporation, and Pennsylvania Power and Light Company;

2. Two transporter defendants: Robert J. McAuliffe and Robert J. McAuliffe, Inc.;

3. Five owner/operator defendants: Stephen D. Heleva, Lois Heleva, Arthur J. Heleva as co-trustee of the Stephen D. and Lois M. Heleva Trust, Mary Ann Klugh as co-trustee of the Stephen D. and Lois M. Heleva Trust, and Heleva Landfill, Inc. ("Owner/Operator Defendants").

E. On January 28, 1997, the Court entered a consent decree for recovery of past costs for the Site ("1997 Consent Decree") with the seven generator defendants and two transporter defendants listed above, as well as four additional generator defendants: Gramet Holdings Corp. as successor in interest to Alpo Pet Foods, Inc., GAF Corporation, Pfizer, Inc., and Mack Trucks, Inc. (collectively, "1997 Settling Defendants"). The 1997 Settling Defendants agreed to pay the United States \$12,067,696.32 in past response costs. In the 1997 Consent Decree, the United States granted a covenant not to sue for certain costs, but reserved, among other things, its right to seek reimbursement of oversight costs incurred by the United States in connection with the Site that were "not within the definition of Past Response Costs, including but not limited to, oversight costs incurred after the date of lodging of this Consent Decree."

F. On December 22, 2005, the United States Court of Appeals for the Third Circuit issued a decision in U.S. v. E.I. Dupont de Nemours et al., 432 F.3d 161 (3d Cir. 2005), holding that the United States is authorized to recover costs incurred in overseeing private party removal

and remedial actions that are not inconsistent with the National Contingency Plan.

G. The United States has filed a subsequent complaint under CERCLA Section 107, 42 U.S.C. § 9607, seeking reimbursement for unreimbursed oversight costs and other response costs incurred and to be incurred in connection with the Site. The Parties have agreed to a settlement resolving the United States' claims, the terms of which are contained in this Consent Decree.

H. The purpose of this Consent Decree is to require Settling Defendants to pay Past Response Costs, as defined herein, paid by the United States, which costs were not reimbursed under the 1997 Consent Decree, and to pay Future Response Costs, as defined herein. This Consent Decree does not affect or alter any continuing obligations imposed by the 1997 Consent Decree on any signatories thereto.

I. Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the subsequent complaint.

J. The United States and Settling Defendants agree and this Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:



## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "1997 Consent Decree" shall mean the consent decree entered by this Court in Civil Action No. 93-1339 on January 28, 1997.

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

c. "Consent Decree" shall mean this Consent Decree and all appendices

attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in connection with the Site after February 12, 2008. Future Response Costs shall also include (a) all Interest on those costs Settling Defendants have agreed to reimburse under this Consent Decree that have accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 12, 2008, to the date of payment; and (b) all costs incurred prior to February 12, 2008, but paid after that date.

i. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

- j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.
- k. "Parties" shall mean the United States and the Settling Defendants.
- l. "Past Response Costs" shall mean those costs, including, but not limited to, direct and indirect costs, that the United States has paid at or in connection with the Site through February 12, 2008.
- m. "Plaintiff" shall mean the United States.
- n. "Response Action" shall mean all activities as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).
- o. "Record of Decision" or "ROD" shall mean the 1985 ROD and the 1991 ROD Amendment relating to the Site, and all attachments and/or amendments thereto.
- p. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- q. "Settling Defendants" shall mean those parties identified in Appendix A.
- r. "Site" shall mean the Heleva Landfill Site, consisting of an approximately twenty acre landfill located on a 93 acre tract in North Whitehall Township, Lehigh County, Pennsylvania, and depicted on the map included as Appendix C to this Consent Decree, as well as any area in which hazardous substances from the landfill have come to be located.
- s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

**V. PAYMENT OF RESPONSE COSTS**

4. **Reimbursement of Past Response Costs.** Settling Defendants commit to pay the United States \$603,047.49, plus Interest, in payment for Past Response Costs. This payment shall be made in two installments as follows.

a. Within forty-five (45) days of the Effective Date of this Consent Decree, Settling Defendants shall pay to EPA \$433,553.75.

b. Within nine months (or 270 days) of the Effective Date of this Consent Decree, Settling Defendants shall pay to EPA \$169,493.74, plus Interest, on the remaining balance in reimbursement of Past Response Costs.

c. Payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the EPA Region and Site Spill ID Number 0359, and DOJ Case Number 90-11-2-684/1, and the U.S. Attorney's Office File Number 2009v00224 . Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions) and to:

Docket Clerk (3RC00)  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

and

Barbara Borden (3PM30)  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 10103-2029

All or a portion of the total amount to be paid by Settling Defendants pursuant to this Section shall be deposited in a special account within the EPA Hazardous Substance Superfund to be retained and used by EPA to conduct or finance response actions at or in connection with the Site including, without limitation, oversight activities, or transferred by EPA to the EPA Hazardous Substance Superfund.

5. Payment of Future Response Costs. Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. The United States intends to send Settling Defendants a bill on an annual basis requiring payment that includes a cost summary setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Within fourteen (14) days after Settling Defendants receive the bill, they may make a written request to EPA for the supporting cost documentation. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except that if the Settling Defendants request the supporting cost documentation in a timely manner, payment shall be made within thirty (30) days after Settling Defendants' receipt of the supporting cost documentation, except as otherwise provided in Paragraph 6 below. Settling Defendants shall make all payments required by this Paragraph 5 in accordance with instructions provided by EPA with each bill and referencing the name and address of the party making the payment, USAO File Number 2009V00224, EPA Region III and Site Spill ID Number 0359, and

DOJ Case Number 90-11-2-684/1. Settling Defendants shall send notice of each payment of Future Response Costs to the United States as specified in Section XII (Notices and Submissions) and to:

Docket Clerk (3RC00)  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

and

Barbara Borden (3PM30)  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 10103-2029

All or a portion of the total amount to be paid by Settling Defendants pursuant to this Section may be deposited in a special account within the EPA Hazardous Substance Superfund to be retained and used by EPA to conduct or finance response actions at or in connection with the Site including, without limitation, oversight activities, or transferred by EPA to the EPA Hazardous Substance Superfund.

6. Settling Defendants may contest payment of any Future Response Costs under Paragraph 5 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill, or in the event supporting cost documentation is timely requested, within thirty (30) days of receipt of the supporting cost documentation, and must be sent to the United States pursuant to Section XII (Notices and Submissions) (collectively referred to as, the "Thirty Day Period"). Any such

objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the Thirty Day Period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 5. Within the Thirty Day Period, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Within the Thirty Day Period, the Settling Defendants shall initiate the Dispute Resolution procedures in Section VII (Dispute Resolution). If the United States prevails in the dispute, within five days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 5. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 5; Settling Defendants shall be disbursed the balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes

regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

**VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

**7. Interest on Late Payments.**

a. In the event that the payment required by Subparagraph 4.a is not made within forty-five (45) days of the Effective Date, as defined in Section XVI herein, or the payments required by Paragraph 5 are not made within thirty (30) days of the Settling Defendants' receipt of the bill, or if supporting cost documentation is timely requested, within thirty (30) days after receipt of supporting cost documentation, Settling Defendants shall pay Interest on the unpaid balance. Pursuant to Subparagraph 4.b, the payment required within nine months (or 270 days) is subject to Interest. In the event that the payment required by Subparagraph 4.b is not made within nine months (or 270 days) of the Effective Date, the unpaid balance shall be subject to further Interest. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date as defined in Section XVI herein.

b. In the event that the payment required by Paragraph 5 is not made within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, the Interest on Future Response Costs shall begin to accrue on the issue date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not



limited to, payment of stipulated penalties pursuant to Paragraph 8. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 5.

8. Stipulated Penalties.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 750.00	1st through 14th day
\$ 1,500.00	15th through 30th day
\$ 3,000.00	31st day and beyond

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

United States Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the name of the Site, EPA Region III and Site Spill ID Number 0359, and DOJ Case Number 90-11-2-684/1. Copies of checks paid pursuant to

this Paragraph, and any accompanying transmittal letters, shall be sent to EPA and DOJ as provided in Section XII (Notices and Submissions) and to:

EPA Regional Docket Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

c. Penalties shall accrue as provided in this Section regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

9. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

10. Payments made under Paragraphs 8-9 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

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

## **VII. DISPUTE RESOLUTION**

12. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes concerning EPA's bills for Future Response Costs arising under or with respect to this Consent Decree. Nothing in this Section shall be construed to allow Settling Defendants to dispute or assert claims related to the ROD as defined herein or the Administrative Orders described in Section I.C. above. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

13. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute.

14. **Statements of Position.**

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation

period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 15 or Paragraph 16 of this Consent Decree.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 15 or 16. Within seven days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 15 or 16 the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 15 and 16.

15. Formal dispute resolution for disputes concerning whether a cost item represents costs that are inconsistent with the NCP, and which pertain to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under

applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. EPA shall maintain an administrative record of the dispute which shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

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

c. Any administrative decision made by EPA pursuant to Paragraph 15.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Hazardous Site Cleanup Division Director is arbitrary and capricious or otherwise not in accordance with law.

Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 15.a.

16. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph 16.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 14, the Director of the Hazardous Site Cleanup Division, EPA Region III will issue a final decision resolving the dispute. The Hazardous Site Cleanup Division Director's decision shall be binding on the Settling Defendants unless, within ten (10) days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of remedial action. The United States may file a response to Settling Defendants' motion.

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

17. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under the Administrative Orders

described in Section I.C. above. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Except as provided in Paragraph 18.d of this Consent Decree, and notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Failure to Comply with Requirements of Consent Decree).

18. Except as provided in subsection d of this Paragraph 18, stipulated penalties shall continue to accrue as provided in Paragraph 17 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Paragraph 18.c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at

least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail;

d. Stipulated penalties shall not accrue: (1) with respect to a decision by the Director of the Hazardous Site Cleanup, EPA Region III, under Paragraph 15.b or 16.a of Section VII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section VII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

19. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 20 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs and Future Response Costs as defined in this Consent Decree. This covenant not to sue shall take effect upon the payment of Past Response Costs as set forth in Paragraph 4.a (Reimbursement of Past Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.



20. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 19 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

- a. Liability of Settling Defendants for failure to meet a requirement of this Consent Decree;
- b. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. Criminal liability;
- d. Liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- e. Liability for response costs incurred or to be incurred by the United States that are not within the definitions of Past Response Costs or Future Response Costs;
- f. Liability for Future Response Costs not yet reimbursed pursuant to Section V; and
- g. Liability for failure to comply with the Administrative Orders described in Section I.C. above.

**IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

21. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Past Response Costs, Future Response Costs, or this Consent Decree, including but not limited to:

- a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. Any claim arising out of response actions at the Site; and
- c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

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

**X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

23. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.

§ 9613(f)(2), or as may otherwise be provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs and Future Response Costs.

25. Settling Defendants agree that they will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of any suit or claim for contribution brought by Settling Defendants for matters related to this Consent Decree, except any such suit or claim which Settling Defendants initiated prior to lodging of this Consent Decree. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against any Settling Defendant for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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

## **XI. RETENTION OF RECORDS**

27. Until six (6) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all documents and information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

28. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such documents or information, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such documents or information to EPA. Each Settling Defendant may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by the Court. If any Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiff in redacted form to mask the privileged portion only. A Settling Defendant shall retain all documents or information that it claims to be privileged until the United

States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

29. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. Not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site (other than the routine destruction of drafts), after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

b. Fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XII. NOTICES AND SUBMISSIONS**

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DOJ # 90-11-2-684/1)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Robin E. Eiseman (3RC41)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

As to Alcatel-Lucent USA Inc.:

Ralph L. McMurry, Esq.  
30 Vesey Street - 15<sup>th</sup> Floor  
New York, NY 10007

As to Olin Corporation:

Curt M. Richards  
Corporate Vice President, Environment, Health & Safety  
Olin Corporation  
3855 North Ocoee Street, Suite 200  
Cleveland, TN 37312

As to Pfizer Inc.:

Gareth J. Port  
Pfizer Global Environment, Health, and Safety, Legal Division  
Pfizer Inc.  
150 East 42<sup>nd</sup> Street  
Mail code 150/2/76  
New York, NY 10017

**XIII. RETENTION OF JURISDICTION**

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XIV. INTEGRATION/APPENDICES**

32. This Consent Decree and its Appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following Appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the list of Settling Defendants and "Appendix B" is a map of the Site.

**XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

**XVI. EFFECTIVE DATE**

35. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

**XVII. SIGNATORIES/SERVICE**

36. The undersigned representatives of the Settling Defendants to this Consent Decree and of the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

37. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

38. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree, if necessary, to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

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

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United States District Judge



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Alcatel-Lucent USA, Inc., et al., relating to the Heleva Landfill Site.

**FOR THE UNITED STATES OF AMERICA**

UNITED STATES DEPARTMENT OF JUSTICE

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: 6/23/09

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

Date: 6/23/09

\_\_\_\_\_  
PETER J. PUTIGNANO  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 305-0354

MICHAEL L. LEVY  
United States Attorney  
Eastern District of Pennsylvania

Date: 6/19/09

VIRGINIA GIBSON  
Civil Chief  
United States Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut St., Suite 1250  
Philadelphia, PA 19106  
(215) 861-8355

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION III

Date: 6/9/09

WILLIAM C. EARLY  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region III

Date: 5/28/09

JUDITH KATZ  
Acting Regional Counsel  
U.S. Environmental Protection Agency, Region III

Date: 5/28/09

ROBIN E. EISEMAN  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-2612

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Alcatel-Lucent USA, Inc., et al., relating to the Heleva Landfill Site.

FOR DEFENDANT ALCATEL-LUCENT USA,  
INC.

Date: 4/17/09

Name: Patrick Morrison

Title: Real Estate / Ellis Vice President

Address: 600 Mountain Ave., Murray Hill, NJ, 07974

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

Name: RALPH McMURRAY

Title: RALPH McMURRAY, CEO

Address: 15th Floor

30 Vesey Street  
New York  
New York  
10007

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Alcatel-Lucent USA, Inc., et al., relating to the Heleva Landfill Site.

**FOR DEFENDANT OLIN CORPORATION**

Date: 4/17/09

\_\_\_\_\_  
Name: Curtis M. Richards

Title: Corporate V.P. EH&S

Address: 3855 N. Ocoee St. Suite 200 Cleveland TN 37312

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

Name: Curtis M. Richards

Title: Corporate V.P. EH&S

Address: 3855 North Ocoee St. Suite 200 Cleveland TN 37312

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Alcatel-Lucent USA, Inc., et al., relating to the Heleva Landfill Site.

FOR DEFENDANT PFIZER, INC.

Date: 5/6/09

Name: MICHAEL G. MAHONEY  
Title: ASSISTANT GENERAL COUNSEL, EHS-LEGAL  
Address: PFIZER INC.  
235 EAST 42ND STREET  
NEW YORK, NY 10017

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

Name: Michael M. Thomas Esq  
Title: Counsel to Pfizer Inc  
Address: 1 Lee Hill Rd  
Andover NJ 07821

