

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BECKMAN COULTER, INC., *et al.*,

Defendants.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, *et al.*,

Plaintiffs,

v.

AMERICAN THERMOPLASTICS CORP., *et al.*,

Defendants.

Civil Action No.
98-CV-4812 (WHW)

Civil Action No.
98-CV-4781 (WHW)

**PARTIAL CONSENT DECREE BETWEEN PLAINTIFFS, UNITED STATES OF
AMERICA, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,
AND SETTLING DEFENDANTS, SETTLING FEDERAL AGENCIES AND SETTLING
MUNICIPAL GROUP PARTIES**

CONSENT DECREE

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I. BACKGROUND

A. On October 19, 1998 the New Jersey Department of Environmental Protection (NJDEP) and the Administrator of the New Jersey Spill Compensation Fund (the Administrator) and on behalf of the Commissioner of NJDEP as trustee for the State's natural resources (collectively, the State Plaintiffs), filed a complaint (the State Action) in this consolidated matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as well as other authorities, including the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23 *et seq.* (Spill Act), the New Jersey Sanitary Landfill Closure and Contingency Fund Act, N.J.S.A. 12:1E-100 *et seq.*, (Closure Act) and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*, (WPCA) seeking recovery of costs incurred and to be incurred in responding to the release or threat of release and/or discharge of hazardous substances at or in connection with the Combe Fill South Landfill Superfund Site in Chester, New Jersey (the Site, as defined herein) and compensation for damages to natural resources as a result of contamination at the Site.

B. On October 20, 1998, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this consolidated matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9607, seeking the recovery of costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the clean-up of the Site. NJDEP filed an amended complaint on August 31, 1999 which was consolidated with the EPA complaint (the Actions).

C. Certain parties (the Third-Party Plaintiffs) named as defendants in the Complaints filed by the

United States and the State Plaintiffs filed third-party complaints seeking contribution under CERCLA, the Spill Act, and other State causes of action, from various parties who were named as Third-Party defendants (the Third-Party Defendants).

D. The Plaintiffs have previously resolved the liability of certain defendants in partial consent decrees entered by this Court, including a partial consent decree with Garbco Associates, Inc., f/k/a J. Filiberto Sanitation Inc, Chester Hills, Inc., Waste Management of New Jersey, Inc., Joseph B. Filiberto and John C. Filiberto (based on certain defendants limited ability to pay) entered on October 6, 2005, and a Partial Consent Decree and an NRD Consent Decree with certain other intervenors as entered on October 22, 2003 (as identified for the convenience of the Court in Appendix A).

E. EPA, with the concurrence of NJDEP, and based, in part, on documentation provided by certain potentially liable defendants concerning volumetric information, including information adjusted for toxicity and compaction, provided in accordance with the instructions of this Court and based on a determination by the Court-appointed Neutral (as to which Settling Defendants reserve all rights, claims and defenses), to the Plaintiffs on May 27, 2008, has concluded that:

1. The amounts of hazardous substances contributed to the Site by certain Settling Defendants is minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A), because each such Settling Defendant contributed less than 150,000 cubic yards of solid waste (as determined by the Neutral on an uncompacted basis) to the Site and the hazardous substances contributed by each of such Settling Defendants to the Site are not significantly more toxic or of significantly greater hazardous effect than other

hazardous substances at the Site (*De Minimis* Settling Defendant); and

2. As a result of the minimal amount of hazardous substances contributed by each of the *De Minimis* Settling Defendants, the payment to be made by each *De Minimis* Settling Defendant under this Decree involves only a minor portion of the Response Costs at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A), predicated upon anticipated total Response Costs incurred or to be incurred at or in connection with the Site in excess of \$159.6 million.

F. As a result of the release or threatened release of hazardous substances at the Site, the Plaintiffs have undertaken response actions at or in connection with the Site under applicable law including the WPCA, and the Solid Waste Management Act, N.J.S.A. 13:1E-1 through 19 (SWMA), and will undertake further response actions in the future. In performing these response actions, Plaintiffs have incurred and will continue to incur Response Costs at or in connection with the Site. The response actions undertaken and/or further response actions planned have been conducted or planned pursuant to a Record of Decision issued by EPA on September 29, 1986, (ROD) an Explanation of Significant Differences for the Gas System issued by EPA on April 17, 2006 (ESD), and pursuant to the authority vested in the Commissioner of NJDEP under the statutes referenced in this Paragraph. The Parties anticipate that future response actions at or in connection with the Site, including a second operable unit remedial action (OU2 Remedial Action), may be conducted pursuant to the ROD, an amended ROD, the ESD, further ESD, and future ROD, including any of the foregoing as a result of a five-year review, as provided for under 40 CFR Part 300 *et. seq.* The response actions undertaken and/or further response actions to be undertaken include, but are not limited to, those contemplated by the ROD and a removal action performed and being performed by the NJDEP in

connection with an area of contamination at the Site identified outside the landfill cap near the northern boundary of the areas formerly operated as the “Chester Hills Landfill” and “the Combe Fill South Landfill” and extending across that boundary (the New Waste Cell), which includes the removal and disposal of wastes located in the New Waste Cell area a/k/a “North Cell” area and an extension of the landfill cap over that area and all other work in connection with that area (the Removal Action).

G. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal Natural Resources trustees, including the Department of the Interior and the National Oceanic and Atmospheric Administration, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Decree.

H. The State of New Jersey, on behalf of the New Jersey Department of Corrections, the New Jersey Department of Human Services, the New Jersey Department of Transportation, the New Jersey Department of Military and Veterans Affairs, and the New Jersey Department of Law and Public Safety (collectively, the State Settling Defendants), was named as a Third-Party Defendant in the Actions. The claims against the State Settling Defendants were dismissed by order of this Court on October 27, 2003, as the result of an agreement that they entered into under which they assisted the United States and State Plaintiffs by paying the sum of Two Million Dollars (\$2,000,000) toward settlement of claims asserted against the United States and NJDEP by Foster Wheeler Enviroresponse, Inc. (Foster Wheeler), and/or other contractors, subcontractors, and/or other entities who performed remediation work at the Site for the United States and NJDEP, in the related matter of *Foster Wheeler Enviroresponse, Inc. v. the State of New Jersey Department of Environmental Protection and*

O'Brien & Gere Engineers, Inc., New Jersey Superior Court, Docket No. MRSL-2290-96 (Foster Wheeler Action). It was further agreed under that Foster Wheeler Action settlement agreement that the State Settling Defendants should be included as named Settling Defendants within this Decree (and should receive all of the benefits and protections thereof, without further payment by them to the United States or the State) and that all sums paid in settlement should be considered as Response Costs.

I. Nothing in this Partial Consent Decree (Decree or Consent Decree), shall limit or restrict this Court's ability to enter orders, including Bar Orders as agreed by the Parties, in connection with the Actions, the terms of which will be consistent with this Decree and applicable law.

J. The Settling Defendants identified in Appendix A and Third-Party Municipal Defendants Group Parties identified in Appendix B entering into a settlement memorialized in this Decree do not admit any liability to Plaintiffs or other Parties arising out of the transactions or occurrences alleged in the Actions. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any claim asserted by Settling Defendants.

The Plaintiffs, Settling Defendants, Third-Party Municipal Defendants Group Parties and Settling Federal Agencies agree, and this Court, by entering this Decree finds, the settlement contained in this Decree has been negotiated in good faith and that settlement of this matter will avoid further prolonged and complicated litigation between the Parties, and that the 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, 1345 and 1367, and 42 U.S.C. §§ 9606, 9607 and 9613(b), and also has personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying Complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

III. PARTIES BOUND

2. This Decree is binding upon the Plaintiffs, the Settling Federal Agencies, Settling Defendants and the Third-Party Municipal Defendants Group Parties. Any change in ownership, 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 the Parties under this Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Decree that are defined in CERCLA and the Spill Act, and regulations promulgated thereunder, shall have the meanings assigned to them in CERCLA and the Spill Act or regulations thereunder. Paragraph titles are for information only and are not intended to govern the substantive terms of the Decree. Whenever terms listed below are used in this Decree or in any Appendix attached hereto, the following definitions shall apply:

a. "Annuity" shall mean an Annuity-type instrument, contract, financial instrument, funding agreement or insurance product for the purpose of funding all Future Costs (including State Response Costs paid by NJDEP after June 9, 2006 but not yet reimbursed) at the Site.

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

c. "Certification of Completion" shall mean a written determination by EPA, with the concurrence of NJDEP, not to be unreasonably withheld, that the OU2 Remedial Action has been fully performed, discontinued or determined not to be necessary (without regard to O&M).

d. "Consent Decree" or "Decree" shall mean this Partial Consent Decree and any Appendices attached hereto. In the event of conflict between this Decree and any Appendix, the Decree shall control.

e. "Day" shall mean a calendar day. In computing any period of time under this 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.

f. "*De Micromis* Settlor Third-Party Defendants" shall mean those parties (listed in Appendix A) who have previously resolved their liability at the Site through settlement with certain of the Settling Defendants and through entry of a bar order by this Court.

g. "*De Minimis* Settling Defendants" shall have the meaning ascribed to it in Section I, Paragraph E(1) and shall include all parties denominated as *De Minimis* Settling Defendants in Appendix A.

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

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

j. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund

established by the Internal Revenue Code, 26 U.S.C. § 9507.

k. “Explanation of Significant Differences for the Gas System” or “ESD” shall mean EPA’s Explanation of Significant Differences issued on April 17, 2006, for the modification of the remedy, to change from an active landfill gas and condensate collection and treatment system to a passive landfill gas venting system.

l. “Future Costs” or “Future Response Costs” shall mean all Response Costs that the Plaintiffs incur at or in connection with the Site after entry of this Consent Decree.

m. “Interest” shall mean interest to be paid by each Settlement Group and the Settling Federal Agencies on Past Costs amounts set forth in Section V commencing December 8, 2007 at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507 and subject to change on October 1 of each year, compounded annually beginning January 1, 2009 (Superfund Rate); provided that where a Settlement Group has established a pre-funded Escrow Account pursuant to Paragraph 4, and Escrow Certification has been issued, “Interest” shall mean the aggregate of: (i) interest on Past Costs at the Superfund Rate commencing December 8, 2007 through the date of Escrow Certification, and (ii) interest on Past Costs after that date at the rate paid by such Escrow Account (including compounding, if any) during the escrow period between the date of issuance of such Escrow Certification and the payment of such Settlement Group’s Section V Past Cost obligation before deduction for escrow fees and costs (Escrow Interest Rate).

For the members of the Third-Party Municipal Defendants Group, “Interest” shall mean the interest to be paid by each group member on its allocated share of the Past Cost amounts due from the Third-Party Municipal Defendants Group Parties set forth in Section V commencing December

8, 2007 at the Superfund Rate until payment in full by an individual group member has been made into the escrow account established by the Third-Party Municipal Defendants Group Parties (Municipal Group Escrow Account), and after that time at the rate of interest on Past Costs paid by the Municipal Group Escrow Account until payment in full to the Plaintiffs by such individual group member is made, before deduction for escrow fees and costs.

n. “Natural Resources” shall have the meaning encompassed by Section 101(16) of CERCLA, 42 U.S.C. § 9601(b)(16), N.J.S.A. 58:10-23.11b, the WPCA, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E *et seq.*, and/or any other federal or state statute, regulation, ordinance or other law or common law.

o. “Natural Resource Damages” or “NRD” shall mean damages, restitution, or compensation for injury to, destruction of, loss of use of, loss of, or restoration to, natural resources under the trusteeship of NJDEP and/or the United States caused by the release(s) or threat of release(s) of hazardous substance(s) at the Site or areas in the immediate vicinity of the Site, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release(s), as set forth in or recoverable under Sections 107(a) and 111(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9611(b), the Spill Act, N.J.S.A. 58:10-23.11b *et seq.*, the WPCA, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8. *et seq.*, and/or any other federal, state and local statute, rule, regulation, ordinance, law or common law as the same may be amended or superseded.

p. “NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments, agencies and instrumentalities.

q. “Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of any component of the Site remedy, including the OU1 Remedial Action, OU2

Remedial Action, ESD, Removal Action, and any amendment thereto (including institutional controls).

r. "OU1 Remedial Action" shall mean the landfill cap, shallow groundwater remedy and other measures as more fully described in the September 29, 1986 ROD.

s. "OU2 Remedial Action" shall mean the performance of a Remedial Investigation and Remedial Action Selection Study, remedial investigation and feasibility study and performance of a Remedial Action in connection with potential contamination of groundwater in the deep aquifer at the Site, potential contaminant impacts to surrounding surface water, soil and sediments, and potential effect to human receptors and natural ecological resources in areas of concern including, but not limited to, those identified as Area of Concern (AOC)-1, AOC-2, AOC-3, AOC-4 and AOC-5 in the January, 2005 Site Sampling and Investigation Plan/Remedial Investigation and Focused Feasibility Study (SSIP/FFS) and February 7, 2007 Interim RI Reports submitted by the Louis Berger Group, Inc. to the NJDEP (Berger Report).

t. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral or an upper or lower case letter.

u. "Parties" shall mean the Plaintiffs, the Settling Federal Agencies, Settling Defendants and Third-Party Municipal Defendants Group Parties.

v. "Past Costs" or "Past Response Costs" shall mean all Response Costs that the Plaintiffs have incurred (whether or not paid) and Response Costs paid at or in connection with the Site through the date of entry of this Consent Decree, plus Interest on all such costs through that date.

w. "Plaintiffs" shall mean the United States, EPA, the State, the NJDEP and federal, state and local Natural Resources trustees.

x. "Removal Action" shall mean a removal action performed and being performed by the NJDEP in connection with an area of contamination at the Site identified outside the landfill cap near the northern boundary of the areas formerly operated as the "Chester Hills Landfill" and "the Combe Fill South Landfill" and extending across that boundary (the New Waste Cell) which includes the removal and disposal of wastes located in the New Waste Cell area a/k/a North Cell area and an extension of the landfill cap over that area and all other work in connection with that area.

y. "Response Costs" shall mean all costs of "response" incurred or to be incurred by Plaintiffs, as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in any way relating to the Site, including but not limited to past and future costs of response, both direct and indirect, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and Section 7003 of RCRA, 42 U.S.C. § 6973, and all past and future "clean-up and removal" costs incurred or to be incurred by the State Plaintiffs pursuant to CERCLA and as defined in the Spill Act, N.J.S.A. 58:10-23.11b, both direct and indirect, and including all past and future costs relating to the OU1 ROD, OU1 Remedial Action, Removal Action, OU2 ROD, OU2 Remedial Action (including costs of any Operation and Maintenance to maintain the effectiveness of the remedy, the integrity of the Site, or for any other purpose), oversight costs, administrative costs, and interest on all herein described past and future Response Costs. Such Response Costs shall also include all costs in connection with the Site that the Parties and non-parties incur or may be obligated to pay in connection with the Site, including in connection with claims by Foster Wheeler, and any other contractors, subcontractors, or other entities who performed the remediation of the Site for the United States or the State Plaintiffs, including claims asserted or which could have been asserted in the Foster Wheeler Action, and including attorneys fees, expenses, and costs related to that litigation (Foster Wheeler litigation

costs).

z. “Record of Decision for OU1” or “ROD” or “OU1 ROD” shall mean the Record of Decision issued by EPA on September 29, 1986, the ESD, and any amendment, modification or further ESD for the OU1 ROD, and including any of the foregoing as a result of a five-year review, as provided for under 40 CFR Part 300 *et. seq.*

aa. "Record of Decision for OU2" or "OU2 ROD" shall mean a Record of Decision to be issued by EPA selecting an OU2 Remedial Action or, alternatively, a final remedial determination based upon an OU2 remedial investigation and feasibility study.

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

cc. The “Settlement Groups” shall mean those groups established by the Court as more fully identified in Appendix A and Appendix B for the purpose of allocating payment of the Past Costs, NRD and Future Costs Annuity purchase in Section V hereunder consisting of the “*Ad Hoc* Defendants Group”, “ADR Unaffiliated Defendants Group”, “Breakaway Third-Party Generator Defendants Group”, “Compaction Defendants Group”, “Third-Party Generator Defendants Group”, “Third-Party Transporter Defendants Group” and the “Waste Management Defendants and Third-Party Defendants Group”, all as identified in Appendix A, and Third-Party Municipal Defendants Group as identified in Appendix B. Except as noted herein, no corporate form or other form of association at law is implied by the Court’s designation of the Settlement Groups.

dd. “Settling Defendants” shall mean those parties listed in Appendix A by Settlement Group all of which have settled their potential liability in connection with Matters Addressed in this Consent Decree (as further defined in Paragraph 28) including, without limitation, such Settling Defendants’ predecessors, successors, assigns, parents and subsidiary companies, including all

persons expressly identified in Appendix A. Settling Defendants shall not include those previously settling defendants identified for the record in Appendix A or the Settling Federal Agencies (defined herein) and Third-Party Municipal Defendants Group (as listed in Appendix B).

ee. “Settling Federal Agencies” or “Federal Potentially Responsible Parties” or “Federal PRPs” shall mean the following departments, agencies, or instrumentalities of the United States: the Department of Defense (including the Army), the Department of the Interior, the Department of Labor, the Department of Veterans Affairs and the United States Postal Service.

ff. “Site” shall mean the Combe Fill South Landfill Superfund Site located on Parker Road in Chester and Washington Townships, Morris County, New Jersey, and generally comprising Block 37, Lots 15, 16, 16.01, and 16.03 on the Washington Township Tax Map, and Block 17, Lot 7 on the Chester Township Tax Map (including the New Waste Cell and the areas formerly operated as the “Chester Hills Landfill” and “Combe Fill South Landfill”), which encompasses approximately 102 acres, together with the areal extent of contamination associated with the Site, including contaminated air, soil, structures, groundwater and surface water.

gg. “State” shall mean the State of New Jersey including its departments, agencies and instrumentalities.

hh. “State Plaintiffs” shall mean the NJDEP and its Commissioner (including the Department in its capacity as trustee for State natural resources) and the Administrator of the New Jersey Spill Compensation Fund.

ii. “Third-Party Municipal Defendants Group Parties”, “Settling Municipal Group Parties” or “Third-Party Municipal Defendants Group” shall mean those parties identified by name in Appendix B and any departments and political subdivisions thereof.

jj. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

kk. “United States Plaintiffs” shall mean the United States, acting on behalf of EPA and federal Natural Resources trustees.

V. PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY

4. a. Payments by Settlement Groups and Federal PRPs Generally. The members of the Settlement Groups identified in Appendix A and Appendix B and Federal PRPs will be responsible for the following:

Payment of Past Response Costs \$69 million, of which \$62.6 million will be paid by Settling Defendants and Third-Party Municipal Defendants Group Parties and \$6.4 million by the Federal PRPs (which payment by the Federal PRPs, including Interest, will also resolve their liability for Future Response Costs and NRD);

Payment for NRD \$3,218,700; and

Purchase of Annuity for Future Response Costs, including O&M Purchase of an Annuity paying \$900,000 annually for thirty (30) years (for a total of \$27 million)

b. Amounts of Payments by Settlement Groups. The payment by (and procedures for payment by) the Federal PRPs and the Third-Party Municipal Defendants Group shall be made pursuant to Paragraphs 11 and 12 of the Decree, respectively. Each of the Settlement Groups shall pay the following amounts to resolve claims for Past Response Costs and NRD and to purchase the Annuity to resolve claims for Future Response Costs, including O&M, in accordance with Sections VII (COVENANTS BY PLAINTIFFS) and VIII (RESERVATIONS OF RIGHTS BY PLAINTIFFS) and subject to excess payment adjustment as provided in Paragraph 4(c)(iii) hereunder:

<i>Ad Hoc</i> Defendants Group	\$26 million
ADR Unaffiliated Defendants Group	\$1.5 million
Compaction Defendants Group	\$11 million
Third-Party Municipal Defendants Group	\$12 million
Third-Party Generator Defendants Group	\$11,120,444
Breakaway Third-Party Generator Defendants Group	\$2,879,556
Third-Party Transporter Defendants Group	\$5.25 million
Waste Management Defendants and Third-Party Defendants Group	\$12 million

The obligations of members of Settlement Groups, as identified in Appendix A, which establish fully pre-funded Escrow Accounts and issue an Escrow Certification under Paragraph 4 prior to lodging of the Consent Decree to meet any requirements or pay any amounts owed the State Plaintiffs or the United States under this Decree, are several only. The obligations of members of Settlement Groups, as identified in Appendix A, which do not establish fully pre-funded Escrow Accounts and issue an Escrow Certification under Paragraph 4 prior to lodging of the Consent Decree to meet any requirements or pay any amounts owed under this Decree are joint and several within the Settlement Group.

c. Payment through an Escrow Arrangement and Accounting

(i) Escrow Accounts. Prior to lodging of the Consent Decree, each Settlement Group may establish and pre-fund one or more escrow accounts to receive and pay the amounts which the members of such Settlement Group are required to pay to satisfy such Settlement Group's obligations under Paragraph 4(b) (which collectively total \$81.75 million).

(ii) Escrow Certification. Prior to lodging of the Consent Decree, the escrow agent for each Settlement Group's Escrow Account, court-appointed Liaison Counsel or other

representative for such Settlement Group may certify in writing to the Court and to the Plaintiffs (together with such reasonable documentation as the Court and Plaintiffs may require) that such Escrow Account has received and is in possession of the full amount such Settlement Group is required to pay to satisfy its obligations under Paragraph 4(b) (Escrow Certification).

(iii) Application of any excess payments. It is anticipated that amounts to be paid by the Settlement Groups as recited in Paragraph 4(b) (which total \$81.75 million) may exceed the total amounts the Settlement Groups will be required to pay under the Initial Accounting or the Revised Accounting (as defined in Paragraph 10(b) and (d)), as applicable to meet their obligations to the Plaintiffs under this Decree (any such excess, such Settlement Group's Excess Payment Amount). Each Settlement Group's Excess Payment Amount shall remain the property of the members of such Settlement Groups.

(iv) Obligation for underpayment. Should the Aggregate Cost of the Settlement (as defined in Paragraph 10(b)(3)) as set forth in the Initial Accounting or Revised Accounting, as applicable, be more than the \$81.75 million amount provided above, each Settlement Group shall be responsible for such increased cost on a *pro rata* basis (Settlement Group share stated above divided by \$81.75 million). Within each such Settlement Group, unless the members of such Settlement Group agree otherwise, each member shall be responsible for its *pro rata* share of such increased cost (member's internally allocated share divided by its Settlement Group share stated above).

d. Premium Payment by *De Minimis* Settling Defendants. The Plaintiffs have determined that each *De Minimis* Settling Defendant's payment reflects an amount for: (i) past Response Costs

incurred at or in connection with the Site; (ii) projected Future Response Costs to be incurred at or in connection with the Site; (iii) Natural Resource Damages; and (iv) a premium to cover the risks and uncertainties associated with this settlement, including, but not limited to, the risk that total Response Costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total Response Costs upon which such *De Minimis* Settling Defendant's payments are based.

e. Payment through Escrow Account: Liability of Settlement Groups. As set forth in Paragraph 12 (SETTLING MUNICIPAL DEFENDANTS GROUP PROVISIONS), the members of the Third-Party Municipal Defendants Group shall not be jointly and severally liable for that Group's payment obligation. Members of other Settlement Groups which Groups furnish an Escrow Certification, pursuant to Paragraph 4(c)(ii), that all amounts have been collected by that Group, shall not be jointly and severally liable for the Group's obligation to make the payments for Past Response Costs (pursuant to Paragraphs 4-8), NRD (pursuant to Paragraph 9), Future Response Costs (through purchase of the Annuity pursuant to Paragraph 10), Interest on late payments (pursuant to Paragraph 13) and Stipulated Penalty (pursuant to Paragraph 14).

f. Allocation between Plaintiffs. In order to equitably reallocate certain amounts recovered by EPA and NJDEP through two partial settlements in the instant cases, referred to in Section I, Paragraph D, above, within thirty (30) days of entry of the Decree EPA shall cause the amount of \$1,389,994.53 to be transferred to NJDEP from the Superfund in partial reimbursement of NJDEP Past Costs incurred in connection with the Site. Nothing in this subparagraph 4(f) shall affect the obligations of the Settlement Groups for payment of EPA or State Past Response Costs.

5. Payments of EPA Past Response Costs by Settlement Groups. Of the \$62.6 million to be paid

by Settlement Groups in consideration of Past Response Costs to EPA and NJDEP in accordance with Paragraph 4(a), the Settlement Groups shall pay \$51,019,000 to EPA within sixty (60) days of entry of this Decree, except as expressly provided below with respect to the Third-Party Municipal Defendants Group in Paragraph 12. This amount shall be paid in separate payments, including an additional sum for Interest on each such payment, by each Settlement Group as specified below, except as adjusted pursuant to Paragraph 10(d):

<i>Ad Hoc</i> Defendants Group	\$16,226,226
ADR Unaffiliated Defendants Group	\$936,128
Compaction Defendants Group	\$6,864,942
Third-Party Municipal Defendants Group	\$7,489,028
Third-Party Generator Defendants Group	\$6,940,109
Breakaway Third-Party Generator Defendants Group	\$1,797,089
Third-Party Transporter Defendants Group	\$3,276,450
Waste Management Defendants and Third-Party Defendants Group	\$7,489,028

To the extent that any payment of Past Costs as specified above in this Paragraph is instead applied towards purchase of the Annuity pursuant to Paragraph 10(d), that same amount shall be paid instead by other Settlement Groups as provided herein so that EPA nevertheless receives \$51,019,000 collectively from all of the Settlement Groups.

Payment by Settlement Groups shall be made by FedWire Electronic Funds Transfer (EFT) to the United States Department of Justice account in accordance with current EFT procedures, referencing EPA-Region II and Site Spill ID Number 02-56, and DOJ Case Number 90-11-2-1134/1.

Payment shall be made in accordance with instructions provided to Settlement Groups by the Financial Litigation Unit of the United States Attorney's Office in the District of New Jersey following lodging of this Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

6. Federal Payment Notice. At the time of payment, each Settlement Group shall also send notice to EPA, Justice and Interior that payment has been made in accordance with Section XII (NOTICES AND SUBMISSIONS), and to:

Richard Rice
United States Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268

and to:

Such notice shall reference the EPA Region and Site/Spill Identification Number 0256, DOJ Case Number 90-11-2-1134/1, and the civil action numbers for these consolidated cases.

7. Federal Payment Deposit. All amounts paid by Settlement Groups pursuant to Paragraph 5 shall be deposited in the Combe Fill South Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment of State Past Response Costs by Settlement Groups. Of the \$62.6 million to be paid by Settlement Groups in consideration of Past Response Costs to EPA and NJDEP in accordance with Paragraph 4(a), the Settlement Groups shall pay \$11,581,000 to NJDEP within sixty (60) days of entry of this Decree, except as expressly provided below with respect to the Third-Party Municipal Defendants Group in Paragraph 12. This amount shall be paid in separate payments, including an additional sum for Interest on each such payment, by each Settlement Group as specified below, except as adjusted pursuant to Paragraph 10(d):

Ad Hoc Defendants Group	\$3,683,254
ADR Unaffiliated Defendants Group	\$212,495
Compaction Defendants Group	\$1,558,300
Third-Party Municipal Defendants Group	\$1,699,963
Third-Party Generator Defendants Group	\$1,575,362
Breakaway Third-Party Generator Defendants Group	\$407,929
Third-Party Transporter Defendants Group	\$743,734
Waste Management Defendants and Third-Party Defendants Group	\$1,699,963

To the extent that any payment of Past Costs as specified above in this Paragraph is instead applied towards purchase of the Annuity pursuant to Paragraph 10(d), that same amount shall be paid instead by other Settlement Groups as provided herein so that NJDEP nevertheless receives \$11,581,000 collectively from all of the Settlement Groups.

Each check shall reference the Combe Fill South Landfill Superfund Site and shall be made payable to "Treasurer, State of New Jersey" and forwarded by United States certified mail to:

Section Chief, Cost Recovery & Natural Resource Damages Section
Division of Law, New Jersey Department of Law & Public Safety
25 Market Street
Post Office Box 093
Trenton, New Jersey 08625

9. Payment of Natural Resource Damages by Settlement Groups. Within sixty (60) days of entry of this Decree and except as provided in Paragraph 12 below with respect to the Third-Party Municipal Defendants Group, the Settlement Groups shall pay \$3,218,700 to resolve Plaintiffs' claims for NRD in accordance with Sections VII (COVENANTS BY PLAINTIFFS) of this Decree through separate payments by each Settlement Group as specified below:

Ad Hoc Defendants Group	\$1,023,684
ADR Unaffiliated Defendants Group	\$59,059
Compaction Defendants Group	\$433,097
Third-Party Municipal Defendants Group	\$472,470
Third-Party Generator Defendants Group	\$437,839

Breakaway Third-Party Generator Defendants Group	\$113,375
Third-Party Transporter Defendants Group	\$206,706
Waste Management Defendants and Third-Party Defendants Group	\$472,470

to NJDEP in its capacity as one of the Natural Resources trustees and as a member, along with Interior, in the Combe Fill South Environs Natural Resource Trustee Council.

Each check shall reference the Combe Fill South Landfill Superfund Site and shall be made payable to “Treasurer, State of New Jersey” and forwarded by United States certified mail to:

Section Chief, Cost Recovery & Natural Resource Damages Section
 Division of Law, New Jersey Department of Law & Public Safety
 25 Market Street
 Post Office Box 093
 Trenton, New Jersey 08625

with notice of payment in writing and a copy of any check provided to the United States pursuant to Paragraph 36, herein.

10. Purchase of NJDEP Annuity

a. Terms of the Annuity. Except as provided in Paragraph 12 below with respect to the Third-Party Municipal Defendants Group, within sixty (60) days of entry of this Decree, to resolve claims for Future Response Costs (including NJDEP claims as to State Response Costs paid by NJDEP after June 9, 2006 but not reimbursed) in accordance with Sections VII (COVENANTS BY PLAINTIFFS) and VIII (RESERVATIONS OF RIGHTS BY PLAINTIFFS), the Settlement Groups shall purchase an Annuity which shall pay to NJDEP, as owner and beneficiary, \$900,000 per year, for thirty (30) years, without regard to the cost of such annuity, beginning no later than sixty (60) days after entry of this Decree. Notwithstanding anything in this Decree, the Plaintiffs and the Settlement Groups can agree to an alternative financial instrument or arrangement to fund Future

Costs.

b. Procedures and Timing for Purchasing the Annuity.

- (1) **Identification of Annuity.** Not later than five (5) Days following entry of the Decree, the Liaison Counsel and representatives of the Settlement Groups shall solicit and consider price quotations with respect to an Annuity, identify the particular Annuity desired to be purchased by the Settlement Groups and provide notice to the State of such Annuity for its consent;
- (2) **State Approval.** Consent by the State shall not be unreasonably withheld and shall be deemed to be approved if no written objection is received seven (7) business days after the notice provided pursuant to 10(b)(1);
- (3) **Annuity Cost and Initial Accounting.** Within five (5) Days after approval by the State of the Annuity, the Liaison Counsel and Settlement Group representatives shall: (i) determine the cost of purchasing that Annuity (Annuity Cost); (ii) compute the actual aggregate cost to the Settling Defendants and Third Party Municipal Defendants Group of the Past Response Costs (excluding Interest), NRD and the Annuity Cost (the Aggregate Cost of the Settlement); and (iii) deliver to each Settlement Group a confidential accounting, as necessary to distribute the Aggregate Cost of the Settlement (and its components) among the Settlement Groups, which distribution shall be on a ratable basis (rounding up to the nearest whole dollar) in accordance with the Paragraph 4(b) allocation of payment amounts (the Initial Accounting and, as to each Settlement Group's share of the Annuity Cost, the Initial Annuity Amount);

- (4) **Annuity Confirmation.** Each Settlement Group or the Third Party Municipal Defendants Group (and/or certain members of the Group with payment by those members on behalf of the Group) shall deliver to the Liaison Counsel, by the fifth (5th) Day following receipt of the Initial Accounting, confirmation that such Settlement Groups or members of the Third Party Municipal Defendants Group will fully fund their respective *pro rata* amounts of the Annuity Cost as provided under the Initial Accounting (Annuity Confirmation);
- (5) **Revised Accounting.** In the event that one or more Settlement Groups or Third-Party Municipal Group members do not provide Annuity Confirmation, then, within two (2) Days, the Initial Accounting shall be revised in accordance with Paragraph 10(d) and that Revised Accounting shall be distributed to each Settlement Group;
- (6) **Direction to Make Payment.** Within two (2) Days after the receipt of Annuity Confirmations by all Settlement Groups or distribution of the Revised Accounting, the Liaison Counsel and Settlement Group representatives shall direct that each Settlement Group (or individual members thereof) make specific payments according to the Initial Accounting or Revised Accounting, as applicable, and issue instructions to such Settlement Groups to make payments according to those instructions to purchase the Annuity identified and approved by the State pursuant to Paragraph 10(b)(2);
- (7) **Issuance of Payments for Purchase of the Annuity.** Within two (2) Days after receipt of the instructions from the Liaison Counsel and Settlement Group

Representatives to make specific Annuity payments according to the Initial Accounting or Revised Accounting, as applicable, and to purchase the Annuity, Liaison Counsel and Settlement Group representatives shall direct that those payments be made, and shall notify Plaintiffs within five (5) days thereafter that the Annuity has been purchased.

(8) Accounting to Plaintiffs and the Court. After the Annuity payments pursuant to Paragraph 10(b)(7) have been made, the Liaison Counsel and Settlement Group representatives shall provide the Plaintiffs and the Court with an accounting which reports the information contained in the Initial Accounting or Revised Accounting (including calculation of any Excess Payment Amount, if applicable), along with the amounts of Interest such Settlement Groups (including the amounts of Interest owed through the date of purchase of the Annuity and the additional amounts of Interest owed thereafter until payment is made).

(9) Payment Confirmation. Upon submission of the accounting in Paragraph 10(b)(8), and written payment confirmation from a Settlement Group or members of the Third-Party Municipal Defendants Group to counsel for the Plaintiffs that such Settlement Group or members thereof have fully paid the amounts necessary under the Initial Accounting or Revised Accounting, as applicable, including Interest, the Covenants Not To Sue pursuant to the terms of Paragraph 19 shall be deemed effective for such Settlement Group or its individual members.

c. Purchase of the Annuity Prior to Entry of the Decree. Nothing in this Decree shall prevent the Settlement Groups from purchasing the Annuity prior to entry of the Decree. In the event

that the Settlement Groups decide to purchase the Annuity prior to entry of the Decree, then:

(1) They shall do so in accordance with the procedures set forth in Paragraph 10, but any time deadlines contained therein may be adjusted by the Settlement Groups as necessary;

(2) The payment adjustments set forth in Paragraph 10(d) shall be made in the same manner as if such payment adjustments were performed after entry of the Decree, and such Initial and Revised Accounting shall similarly be binding upon them and the Plaintiffs as if it had been performed after entry of the Decree;

(3) In the event the Court does not approve and enter this Decree, the Annuity purchase shall be voided in accordance with the purchase arrangement between the Settlement Groups and the Annuity seller.

d. Revising the Initial Accounting. To the extent that any Settlement Group or member of the Third Party Municipal Defendants Group contributes more than its *pro rata* share of the Annuity Cost, that amount will be a credit towards its *pro rata* share of Past Costs. In that event, the amount of any such credit towards Past Costs shall be paid by the Settlement Groups (or members of the Third-Party Municipal Defendants Group) who do not contribute toward the purchase of the Annuity, as set forth in the Revised Accounting below. Payment of such adjusted amounts shall be deemed to satisfy a party's payment obligations even though such amounts may differ from the amounts specified in Paragraphs 4(b), 5, and 8.

In the event that one or more such Groups or Third-Party Municipal Defendant Group members do not provide Annuity Confirmation then the Initial Accounting shall be revised and distributed (as so revised, the Revised Accounting) to fund the Annuity Cost as follows: each Settlement Group or member of the Third Party Municipal Defendants Group that has timely

delivered an Annuity Confirmation (Confirming Groups) shall instead be responsible for their respective *pro rata* amounts (Revised Annuity Amounts) of the Annuity Cost based on the ratio that such Confirming Group's respective payment amount recited in Paragraph 4(b) bears to the aggregate payment amounts recited in Paragraph 4(b) for all Confirming Groups only. The Revised Accounting shall provide that:

(1) each Confirming Group that fully funds its Revised Annuity Amount shall:

(a) receive credit under the Revised Accounting for payment of a portion of its Past Costs (excluding Interest) in an amount equal to (x) such Confirming Group's respective Revised Annuity Amount minus (y) such Confirming Group's respective Initial Annuity Amount (the aggregate amount credited to all Confirming Groups pursuant to this clause (1) (a), the Past Costs Credit); and

(b) remain obligated as to Interest on its respective share of Past Costs under the Initial Accounting through the date of purchase of the Annuity; and thereafter remain obligated as to Interest on its respective share of Past Costs under the Initial Accounting minus its Past Cost Credit (until the date of payment of its respective share of Past Costs to the Plaintiffs); and

(c) remain obligated to its respective share of Natural Resource Damages.

(2) each Non-Confirming Group shall:

(a) continue to be responsible for its share of Past Costs (together with Interest) as determined under the Initial Accounting; and

(b) pay to the Plaintiffs an amount equal to such Non-Confirming Group's *pro rata* amount of the Past Costs Credit under the Revised Accounting, plus Interest thereon

from the date of purchase of the Annuity based on the ratio that such Non-Confirming Group's respective payment amount recited in Paragraph 4(b) bears to the aggregate payment amounts recited in Paragraph 4(b) for all Non-Confirming Groups; and

(c) Interest on the Past Cost Credit shall be calculated at the Superfund Rate from the date of purchase of the Annuity until the Non-Confirming Group member's share of the payment into escrow is made and after that date at the escrow rate until payment to Plaintiffs is made; and

(d) remain obligated to its respective share of Natural Resource Damages; and

(e) have no obligation for payment toward the Annuity.

In the event the Third-Party Municipal Defendants Group does not contribute to the purchase of the Annuity, the members of the Third-Party Municipal Defendants Group shall be individually liable for their share of the payments under the Revised Accounting.

e. Annual Reporting. Annuity payments shall be made regardless of the actual costs incurred by the State Plaintiffs in connection with the Site and regardless of whether the State Plaintiffs modify, terminate or increase future response activities prior to, during or after the payment period under this Paragraph; provided that such Annuity payments shall be applied to costs and expenses relating to the Site and that NJDEP shall provide an annual written report (commencing twelve (12) months after the first Annuity payment is made and sixty (60) days after receipt of each subsequent payment) to the EPA and the Settlement Groups accounting for any expenditures relating to the Site, including for the OU1 Remedial Action, OU2 Remedial Action, Removal Action, Operation and Maintenance (and other post-construction activities) and oversight, as well as a non-

binding projection of activities to be conducted for the next 12 month period. NJDEP shall also make available on request documents, reports, information and data in connection with the Site as well as invoices and other information relating to payment for Response Costs and other services rendered or as may otherwise be required to confirm application of Annuity payments to Site matters under applicable tax laws in connection with the Site (whether all of the same shall be in written or electronic form).

f. Payment Information. Each Annuity payment under this Paragraph shall reference the Combe Fill South Landfill Superfund Site and shall be made payable to the “Treasurer, State of New Jersey” and forwarded by United States certified mail to:

Section Chief, Cost Recovery & Natural Resource Damages Section
Division of Law, New Jersey Department of Law & Public Safety
25 Market Street
Post Office Box 093
Trenton, New Jersey 08625

A copy of the Annuity shall be provided to United States Plaintiffs, as provided in Section XII (NOTICES AND SUBMISSIONS), within thirty (30) days of purchase of the Annuity.

11. Payments by Settling Federal Agencies. Of the \$6.4 million, plus Interest on that amount, to be paid on behalf of the Federal PRPs, **\$5,216,000**, plus Interest, shall be paid to the EPA Hazardous Substance Superfund and **\$1,184,000**, plus Interest, will be paid to the State, as soon as reasonably practicable after the date of entry of this Decree, as follows:

To the EPA Hazardous Substance Superfund:

\$4,865,424, plus Interest, on behalf of the Settling Federal Agencies (other than the United States Postal Service) by the United States; and

\$350,576, plus Interest, by the United States Postal Service

Any required information concerning procedures for the payment by the United States Postal

Service will be provided separately. The total amount to be paid to EPA pursuant to this Paragraph shall be deposited by EPA in the Hazardous Substance Superfund.

To the State Plaintiffs:

\$1,104,421, plus Interest, on behalf of the Settling Federal Agencies (other than the United States Postal Service) by the United States; and

\$79,579, plus Interest, by the United States Postal Service

Payment to the State Plaintiffs shall be made by electronic funds transfer in accordance with instructions to be provided by the State within thirty (30) days of entry of the Decree.

If the payment to EPA required under this Section is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate Justice Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the date of entry of this Consent Decree, EPA and Justice have agreed to resolve the issue within thirty (30) days in accordance with a letter agreement dated December 28, 1998 and this Court shall retain jurisdiction for purposes of enforcing the Settling Federal Defendants' obligation.

The Parties to this Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

12. Settling Municipal Group Provisions

a. Identity of Group Members. Appendix B shall state the identity of each member of the Third-Party Municipal Defendant Group, and upon execution of this Decree shall constitute the express representation of each member of the Third-Party Municipal Defendants Group signing the Decree that: (i) it has agreed on the internal municipal group allocation of the \$12 million to be paid by the Third-Party Municipal Defendants Group; and (ii) it shall not contest the Third-Party Municipal Defendants Group allocation.

b. Escrow of Funds. On September 22, 2008, the Third-Party Municipal Defendants Group (acting through its Liaison Counsel) established an escrow account and provided to Plaintiffs reasonable documentation concerning the identity of the escrow agent and escrow depository financial institution. In order to pay for their share of NRD and purchase of the Annuity required herein, Third-Party Municipal Defendants Group within thirty (30) days of entry of the Decree will have funded their escrow account in the amount of not less than \$2.7 million.

c. Liability. The members of the Third-Party Municipal Defendants Group shall not be jointly and severally liable for the under- or non-payment of contributions to the escrow by any of the members of the Third-Party Municipal Defendants Group, however, each such member of the Third-Party Municipal Defendants Group shall be individually liable for its respective share of the estimated \$12 million (which may be adjusted to reflect a lower purchase price for the Annuity) as set out in Paragraphs 4 and 12(a) herein. Each member of the Third-Party Municipal Defendants Group shall also be liable for continuing Interest on any unpaid amounts owed by that member until receipt of payment and the payment of penalties only as set forth in Section VI (FAILURE TO COMPLY WITH CONSENT DECREE), if applicable. The members of the Third-Party Municipal

Defendants Group who have satisfied their monetary obligations shall not be subject to reopener for any claims related to the Site except, if applicable, for liability to the Plaintiffs for future conduct after entry of this Decree under the reservations set forth in Paragraph 21(a)(i)-(iv).

d. Accounting and Non-payment. Within thirty (30) days after lodging the Decree, the Liaison Counsel for the Third-Party Municipal Defendants Group shall provide the names of any group members who have made payments, and the combined amount of such payments deposited into escrow by that date. The accounting need not specify the respective share or amounts paid by any individual member of the Third-Party Municipal Defendants Group. Every thirty (30) days thereafter and upon entry of the Decree, Liaison Counsel for the Third-Party Municipal Defendants Group shall provide Plaintiffs with updated information as to the aggregate amount received and Interest as to such amount and the names of the group members who have paid their settlement shares in full and the names of the group members who have made partial payment into escrow. If the Initial Accounting or Revised Accounting has been performed, such report shall include the information specified in Paragraph 10(b)(8) as of the date of the report. In the event a Third-Party Municipal Defendants Group member has not made full payment, including Interest, by February 16, 2009 or ninety (90) days from the date of the entry of the Decree, whichever is later (Municipal Group Payment Deadline), then within two (2) weeks of that date, Liaison Counsel for the Third-Party Municipal Defendants Group shall submit to this Court, counsel for Plaintiffs, the defaulting member and Liaison Counsel an accounting certifying all settlement funds received from the members of the Third-Party Municipal Defendants Group through the Municipal Group Payment Deadline, and specifying:

For Parties having made full payment: their identity; respective dates of payment(s); and the collective aggregate amounts received from such Parties; and

For any Party which has failed to make full payment of its allocated share: its identity; respective share; respective amount(s) paid and date(s) of payment; and amount of deficiency.

e. Judgment on Consent. In the event that a member of the Third-Party Municipal Defendants Group has not made full payment by the Municipal Group Payment Deadline of its allocated share pursuant to the internal municipal group allocation, including Interest, the matter shall be considered for Judgment upon the request of either Plaintiffs, Liaison Counsel for the Third-Party Municipal Defendants Group, or by this Court, upon its own initiative. After at least ten (10) days written notice to the Court, counsel for Plaintiffs, the defaulting member and Liaison Counsel, and an opportunity for a hearing or submission of documentary evidence, as limited below, a Judgment in the form contained in Appendix C shall be entered against any member of the Third-Party Municipal Defendants Group which did not make full payment, including Interest. Except to contest factual issues as to whether payment has been made, time of payment and amount paid, each such defaulting member of the Third-Party Municipal Defendants Group subject to the Judgment hereby consents to its entry. No other issues but these shall be considered in determining whether judgment shall enter against a member of the Third-Party Municipal Defendants Group who has failed to make full payment. These provisions shall apply in addition to the provisions contained in Section VI (FAILURE TO COMPLY WITH CONSENT DECREE), herein. In lieu of judgment against a defaulting member, EPA and NJDEP can, in their unreviewable discretion, agree to extend payments with Interest. EPA and NJDEP can also confirm an extension in writing to an ability to pay member, who, upon Entry, shall receive the Covenant in Paragraph 19 so long as it complies with the payment schedule.

f. Subsequent Accounting and Relief. The accounting required herein shall be updated

upon the request of Plaintiffs, or by this Court upon its own initiative, and any additional amounts due and owing may be reflected in a subsequent Judgment upon application of the Plaintiffs.

g. Effect Of Site Lien. Nothing in this Decree shall be construed to waive the effect of any existing or future valid lien on the Site or portion thereof by the United States and/or the State Plaintiffs or any agreement between them concerning treatment of lien proceeds. In the event either or both Chester and Washington Township of Morris County, New Jersey, join in such agreement in respect of any tax liens, nothing in this Decree shall be construed to waive the obligations of Chester and/or Washington Township under such agreement. Any such agreement shall be disclosed to the Parties.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

13. Interest on Late Payments. Except as otherwise provided below with respect to the Third-Party Municipal Defendants Group, in the event that any Settlement Group fails to make any Past Cost payment under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY), Interest shall continue to accrue as to that Group on that Group's unpaid Past Cost balance through the date of payment. In the event that any member of the Third-Party Municipal Defendants Group fails to make any Past Cost payment under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY), Interest shall continue to accrue as to that member on the unpaid Past Cost balance through the date of payment.

14. Stipulated Penalty.

a. Except as otherwise provided below with respect to the Third-Party Municipal Defendants Group, if any amounts due EPA by any Settlement Group under Section V (PAYMENT OF PAST

RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) are not paid by the required date, said Settlement Group liable for payment of those amounts or subject to those requirements under this Decree shall be in violation of this Decree and shall pay to EPA, as a Stipulated Penalty, in addition to the Interest required by Paragraph 13, an amount equal to any unpaid balance of the amount that such Settlement Group is required to pay pursuant to Paragraph 4, herein, multiplied by 0.001, for each day such payment is late.

In the event of failure of a member of the Third-Party Municipal Defendant Group (as identified in Appendix B) to make any payment under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) required of that member by the Municipal Group Payment Deadline, that member shall be in violation of this Decree and shall pay EPA a Stipulated Penalty of \$500 per day through the date of payment; provided that no stipulated penalty may be assessed for failure to fund an escrow pursuant to Paragraph 12, herein.

b. Except as otherwise provided below with respect to the Third-Party Municipal Defendants Group, if any amounts due State Plaintiffs by a Settlement Group (as identified in Appendix A) under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) are not paid by the required date, or any requirement of Paragraphs 4 or 11 of Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) is not met, said Group liable for payment of those amounts or subject to those requirements under this Decree shall be in violation of this Decree and shall pay to State Plaintiffs, as a Stipulated Penalty, in addition to the Interest required by Paragraph 13, an amount equal to .001 times any unpaid portion of the amount

that such Group is required to pay pursuant to Paragraph 4, herein, for each day such payment is late.

In the event of failure of a member of the Third-Party Municipal Defendants Group (as identified in Appendix B) to make any payment under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) required of that member by the Municipal Group Payment Deadline, that member shall be in violation of this Decree and shall pay the State a Stipulated Penalty of \$500 per day through the date of payment; provided that no stipulated penalty may be assessed for failure to fund an escrow pursuant to Paragraph 12, herein.

c. Stipulated Penalties are due and payable within thirty (30) days of the date of written demand for payment of the penalties by EPA or NJDEP.

d. All payments to EPA under this Paragraph shall be identified as Stipulated Penalties and shall be made by certified or cashier's check payable to EPA Hazardous Substance Superfund. The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill Identification Number 0256, DOJ Case Number 90-11-2-1134/1, and the civil action number, and shall be sent to:

United States Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
Post Office Box 979076
St. Louis, Missouri 63197-9000

e. On the day of each payment under Subparagraph c, above, Settlement Groups and/or the Third-Party Municipal Defendants Group making such payment shall also send notice that payment has been made to EPA and Justice in accordance with Section XII (NOTICES AND SUBMISSIONS), and to:

Richard Rice
United States Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268

and to:

Such notice shall reference the Site name, the EPA Region and Site/Spill Identification Number 0256, the EPA docket number for this action, DOJ Case Number 90-11-2-1134/1, and the civil action number.

f. All payments to State Plaintiffs under this Paragraph shall be identified as stipulated penalties and shall be made by certified or cashier's check payable to "Treasurer, State of New Jersey." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Combe Fill South Landfill Superfund Site, and shall be sent by certified mail to:

Section Chief, Cost Recovery & Natural Resource Damages Section
Division of Law, New Jersey Department of Law & Public Safety
25 Market Street
Post Office Box 093
Trenton, New Jersey 08625

g. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State Plaintiffs have notified the members of the Settlement Groups and/or Third-Party Municipal Defendants Group subject to such penalties 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 payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

15. Award of Costs in Action to Enforce. If the United States or the State Plaintiffs bring an action to enforce this Decree and prevail or otherwise receive payment under this Section, Settling Defendants and/or members of the Third-Party Municipal Defendants Group who have failed to comply with the Decree against whom such action has been brought shall reimburse the United States and the State Plaintiffs for all costs of such action.

16. Government Remedies. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States or the State Plaintiffs by virtue of Settling Defendants and/or members of the Third-Party Municipal Defendants Group failure to comply with the requirements of this Decree.

17. Waiver of Prior Penalties. Notwithstanding any other provision of this Section, the United States and/or the State Plaintiffs may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Decree.

18. Obligations Following Payment of Stipulated Penalties. Payment of stipulated penalties shall not excuse Settlement Groups and/or members of the Third-Party Municipal Defendants Group from payment as required by Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY).

VII. COVENANTS BY PLAINTIFFS

19. Covenants for Settling Defendants and Third-Party Municipal Defendants Group by United States and State Plaintiffs. Except as expressly provided in Section VIII (RESERVATIONS OF RIGHTS BY PLAINTIFFS), the United States Covenants Not to Sue or to take administrative action against Settling Defendants and the members of the Third-Party Municipal Defendants Group for any response action taken (including the Removal Action) or to be taken and

all Response Costs incurred or to be incurred, as well as NRD, at or in connection with the Site by Plaintiffs or any other person, including pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973. The State Plaintiffs Covenant Not to Sue and agree not to assert any claims for relief or take administrative action against, and release as to NRD, the Settling Defendants and the members of the Third-Party Municipal Defendants Group, pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, the Spill Act, the Closure Act, and/or the WPCA, the SWMA and/or any other state statute, rule, regulation, ordinance, law or common law with respect to the Site, including but not limited to any claims for relief by the Plaintiffs including claims in the Actions, and any claim for Response Costs (including costs of the Removal Action and injunctive relief) and Natural Resource Damages at or in connection with the Site. These Covenants shall take effect as to each Settling Defendant upon payment by such individual Settling Defendants' Settlement Group of all amounts required under Section V as to such Group and these Covenants shall take effect as to each Third-Party Municipal Group member upon such member's payment of all amounts required under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) (including providing confirmation to the Plaintiffs that an Annuity has been purchased pursuant to Paragraph 10). The Covenant as to each individual Settling Defendant and each member of the Third-Party Municipal Defendants Group is also conditioned upon each such Party's compliance with its individual obligation to pay ADR Process fee assessments and Liaison Counsel fees (including as provided for within the Third-Party Transporter Defendant Group and Third-Party Municipal Defendants Group) pursuant to standing Orders of this Court, including Case Management Order No. 2 entered on June

2, 1999 (CMO No. 2). With respect to each Settling Defendant, individually, and each member of the Third-Party Municipal Defendants Group, these Covenants are subject to the veracity of the information provided to EPA and the State Plaintiffs by that Settling Defendant or member of the Third-Party Municipal Defendants Group relating to its involvement with the Site.

20. Covenants for Settling Federal Agencies by Plaintiffs. Except as expressly provided in Section VIII (RESERVATIONS OF RIGHTS BY PLAINTIFFS), Plaintiffs Covenant Not to Sue or to take administrative action against Settling Federal Agencies for any response action taken or to be taken; and all Response Costs incurred or to be incurred, as well as NRD, in connection with the Site by Plaintiffs or any other person, including pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973. The State Plaintiffs Covenant Not to Sue and agree not to assert any claims for relief or take administrative action against, and release as to NRD, the Settling Federal Agencies, pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, the Spill Act, the Closure Act, and/or the WPCA, the SWMA and/or any other state statute, rule, regulation, ordinance, law or common law with respect to the Site, including but not limited to any claims for relief by the Plaintiffs including claims in the Actions, and any claim for Response Costs (including costs of the Removal Action and injunctive relief) and Natural Resource Damages at or in connection with the Site. These Covenants shall take effect as to each Settling Federal Agency upon payment by such Settling Federal Agency of all amounts required under Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY). With respect to each Settling Federal Agency, individually, these Covenants are subject to the veracity of the information provided to EPA and the State Plaintiffs by that Settling

Federal Agency relating to its involvement with the Site.

VIII. RESERVATIONS OF RIGHTS BY PLAINTIFFS

21. a. General reservations of rights. Plaintiffs reserve, and this Decree is without prejudice to, all rights against each Settling Defendant, member of the Third-Party Municipal Defendants Group and each Settling Federal Agency with respect to all matters not expressly included within Plaintiffs' Covenants Not to Sue. Notwithstanding any other provision of this Decree, Plaintiffs reserve all rights with respect to the Site against Settling Defendants, members of the Third-Party Municipal Defendants Group and Settling Federal Agencies with respect to:

- i.** Liability for failure of Settling Defendants, Settling Federal Agencies or a member of the Third-Party Municipal Defendants Group to meet a requirement of this Decree;
- ii.** Criminal liability;
- iii.** Liability based upon ownership or operation of the Site, or upon transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of any hazardous substance, pollutant or contaminant at the Site, after lodging of this Decree; and
- iv.** Liability arising from the past, present or future disposal, discharge, release or threat of release of a hazardous substance, pollutant, contaminant or solid waste outside the Site.

b. Pre-Certification Response Reservations. Notwithstanding any other provision of this Decree, and except as provided in Paragraph 22(a), the United States, on behalf of EPA, and State Plaintiffs reserve, and this Decree is without prejudice to, the right to institute proceedings in these Actions or in a new action, or to issue an administrative order, seeking to compel Settling

Defendants (other than the *De Minimis* Settling Defendants) to fund or perform response actions relating to the Site and/or reimburse the United States, on behalf of EPA, or State Plaintiffs for additional costs of response (other than for cost overruns for the Removal Action or the response actions selected in the OU1 ROD or the OU2 ROD) if, prior to Certification of Completion of the OU2 Remedial Action, conditions at the Site, previously unknown to EPA or the State Plaintiffs, are discovered, or information, previously unknown to EPA or the State Plaintiffs, is received, in whole or in part and EPA or the State Plaintiffs determine that these previously unknown conditions or information together with any other relevant information indicates that the OU1 Remedial Action, OU2 Remedial Action and Removal Action are not protective of human health or the environment. For purposes of this subparagraph, State Plaintiffs shall not include the NJDEP in its capacity as Trustee for State natural resources.

c. Post-Certification Response Reservations. Notwithstanding any other provision of this Decree, and except as provided in Paragraph 22(b), the United States, on behalf of EPA, and State Plaintiffs reserve, and this Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendants (other than the *De Minimis* Settling Defendants) to fund or perform response actions relating to the Site and/or reimburse the United States, on behalf of EPA, or the State Plaintiffs for additional costs of response (other than for cost overruns for the Removal Action or the response actions selected in the OU1 ROD or the OU2 ROD) if, subsequent to Certification of Completion of the OU2 Remedial Action, conditions at the Site, previously unknown to EPA or the State Plaintiffs, are discovered, or information, previously unknown to EPA or the State Plaintiffs, is received, in whole or in part, and EPA or the State Plaintiffs determine that these previously unknown conditions or information

together with any other relevant information indicates that the OU2 Remedial Action and Removal Action are not protective of human health or the environment. For purposes of this subparagraph, State Plaintiffs shall not include the NJDEP in its capacity as Trustee for State natural resources.

d. Reservations Concerning *De Minimis* Settling Defendants. Notwithstanding any other provision in this Decree, the United States, on behalf of EPA, and State Plaintiffs reserve, and this Decree is without prejudice to, the right to institute proceedings against any individual *De Minimis* Settling Defendant in this action or in a new action or to issue an administrative order to any individual *De Minimis* Settling Defendant seeking to compel that *De Minimis* Settling Defendant to fund or perform response actions relating to the Site, or reimburse the United States, on behalf of EPA, or the State Plaintiffs for additional costs of response (other than for cost overruns for the Removal Action or the response actions selected in the OU1 ROD or the OU2 ROD), if information is discovered which indicates that such *De Minimis* Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such *De Minimis* Settling Defendant no longer qualifies as a *de minimis* party at the Site because such *De Minimis* Settling Defendant individually contributed greater than 150,000 cubic yards of solid waste (as determined by the Neutral on an uncompacted basis) at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site. For purposes of this subparagraph, State Plaintiffs shall not include the NJDEP in its capacity as Trustee for State natural resources.

22. Information and Conditions Known

a. For purposes of Subparagraph 21(b) (Pre-Certification Response Reservations) above, the information or conditions known to EPA or the State Plaintiffs shall include only that information or

those conditions:

i. known to EPA or the State Plaintiffs as of the date of lodging of the Decree and arising directly from the OU1 remedial investigation, OU1 feasibility study, OU1 ROD, OU1 Remedial Action or the Removal Action, and (1) contained or referenced in the ROD, administrative record for the ROD, post-ROD administrative record and scopes of work and contracts for the OU1 Remedial Action and the Removal Action, or (2) contained or referenced in any other records relating to the Site prepared by or for or received by EPA or State Plaintiffs and their employees; or

ii. known to EPA or the State Plaintiffs through the date of Certification of Completion of the OU2 Remedial Action within the scope of the OU2 ROD and arising directly from the Removal Action, OU2 remedial investigation, OU2 feasibility study, OU2 ROD, OU2 remedial design, and/or OU2 Remedial Action, and (1) contained or referenced in records relating to the Removal Action, OU2 remedial investigation, OU2 feasibility study, OU2 ROD, OU2 remedial design, or OU2 Remedial Action, or (2) contained or referenced in any other records relating to the Site prepared by or for or received by EPA or State Plaintiffs and their employees; or

iii. related to the Site and contained or referenced in any of the documents listed in Appendix "E".

b. For purposes of Subparagraph 21(c) (Post-Certification Response Reservations), above, the information or conditions known to EPA or the State Plaintiffs shall include only that factual information or those conditions known to EPA or the State Plaintiffs as of the date of Certification of Completion of the OU2 Remedial Action and either (i) contained or referenced in records relating to the Site prepared by or for or received by EPA or State Plaintiffs or its employees; or (ii) otherwise factually known to EPA or State Plaintiffs.

c. As soon as reasonably practicable after completion of the OU2 Remedial Action (or as of the date of a final remedial determination based upon the OU2 remedial investigation that no further OU2 Remedial Action is necessary), with the concurrence of NJDEP, not to be unreasonably withheld, EPA will issue the Certification of Completion of the OU2 Remedial Action.

d. For purposes of Paragraph 22(a)(ii), no information or conditions will be considered to be new information or conditions unless EPA or the State Plaintiffs have memorialized such information or conditions in records as soon as reasonably practicable after discovery of such information or conditions.

23. Compaction Defendants' Reservations.

a. **Ability to Pay Settlement.** The Plaintiffs and this Court recognize that, except for the payment of the amounts in Paragraph 4(b) to be paid on behalf of the Compaction Defendants, through insurance recoveries, the resources of the Compaction Defendants are limited.

b. **Compaction Contribution Action.** The Compaction Defendants have indicated their intention of pursuing a declaratory judgment, cost recovery and/or contribution action under CERCLA, the Spill Act, other applicable authorities and common law against Carter Day Industries, Inc., Combustion Equipment Associates, Inc., Combe Fill Corporation (collectively, the Carter Day Parties) and their insurance carriers (collectively, the Carter Day Carriers), and other persons who have not entered into this Decree or prior consent decrees in the Actions, for reimbursement of the Compaction Defendants' payment amount (\$11 million) under Paragraph 4(b) and any additional amount as provided in the Judgment on Consent as set forth in Appendix D (the Compaction Contribution Action).

c. Compaction Consent Judgments.

(i) Initial Consent Judgment. In addition to the payment obligation of the Compaction Defendants Group pursuant to Paragraph 4(b), the Compaction Defendants further consent to the Judgment against them contained in Appendix D, requiring said Defendants to also pay to the United States and State Plaintiffs any net proceeds of amounts recovered from the Compaction Contribution Action for claims for Response Costs or NRD not recovered by the United States and State Plaintiffs in this Decree, after payment by the Compaction Defendants in the following order: first, payment of a percentage of amounts recovered into an Escrow Fund in accordance with the Escrow provisions of paragraph 5 of Appendix D; second, payment to counsel for the Compaction Defendants of reasonable attorneys fees and other reasonable costs of litigation; third, reimbursement of the Federal Insurance Company up to the amount it has contributed to the Compaction Defendants' \$11 million payment to the Plaintiffs under Paragraph 4(b); and fourth, reimbursement of the parties in the instant or prior settlements in the Actions for reasonable attorneys fees and costs incurred in discovery to the extent that the Court has not previously required such payments by the Carter Day Parties. The foregoing amounts will be payable by the Compaction Defendants only to the extent that these amounts are recovered by the Compaction Defendants through the Compaction Contribution Action.

(ii) Additional Consent Judgment. In addition to the Consent Judgment above, in the event that any entity that was a member of any Settlement Group as of May 7, 2008 that did not opt-out of the settlement pursuant to the Order of this Court dated June 5, 2008, and failed to execute the Decree (Defaulting Party), the Compaction Defendants agree to a Consent Judgment for the aggregate amount of any shortfall, including principal and Interest, that would have been paid by all

Defaulting Parties (Defaulting Party Action). The Compaction Defendants may proceed in contribution or otherwise under this additional Consent Judgment only against such Defaulting Parties for such aggregate amount, with any net proceeds, after attorneys fees and costs, to be paid to the United States and State Plaintiffs. Liaison Counsel have provided to the Court and the Plaintiffs the names of the members of the Settlement Groups who did not opt-out of this settlement by the opt-out date set by the Court. Either the Plaintiffs or the Compaction Defendants may submit a Consent Judgment to this Court in the Actions for such additional amount. The Compaction Defendants may not compromise their contribution action described in this subparagraph without the approval of the Plaintiffs and this Court.

(iii) Plaintiffs shall cooperate in good faith with the Compaction Defendants in the Compaction Contribution and any Defaulting Party Action.

d. Retention of Jurisdiction. The United States and the State Plaintiffs have an interest in the Compaction Contribution Action and the Defaulting Party Action, under which net proceeds will be paid to the United States and the State Plaintiffs as reimbursement for their unreimbursed Response Costs. In order to (1) administer this decree consistent with the expectations of the parties and to protect them; (2) ensure the efficient litigation of the Compaction Contribution Action and the Defaulting Party Action; and (3) address any discovery directed to the United States during the course of the Compaction Contribution Action and the Defaulting Party Action, pursuant to 28 U.S.C. § 1367(a), this Court shall retain jurisdiction over the parties to this Decree, the Compaction Contribution Action and the Defaulting Party Action, and all related proceedings.

e. Discovery. This Court may consider appropriate limitations to any discovery which may be sought in the Compaction Contribution Action and Defaulting Party Action with due regard to:

(1) availability of information in the public record including that contained in the Document Discovery Repository (DDR) (established pursuant to CMO No.2), consistent with the procedures set out in Paragraph 33, as well as other publicly available Site-related documents; and (2) availability of information through stipulation or voluntary agreement with the settling parties or other parties who have not resolved their liability to the Plaintiffs. This Court may enter Orders containing findings of fact and conclusions of law which may be dispositive of certain factual and legal matters and which may otherwise limit discovery in the Compaction Contribution Action and the Defaulting Party Action with respect to all parties in the instant or prior settlements in the Actions other than the Compaction Defendants. Furthermore, this Court recognizes that the defendants and third-party defendants in the Actions have participated in an extensive Court-approved ADR Process designed to facilitate allocation of potential liability. The Court may take judicial notice of the amounts paid in settlement by the Settling Defendants, Settling Municipal Group Parties and Settling Federal Agencies pursuant to Paragraph 4, and may limit discovery against such parties.

f. Confidentiality and Other Relief. Nothing contained herein shall:

(i) alter or amend any provision governing the confidentiality protections contained in all prior Orders of this Court in the Actions, including CMO No. 2; or

(ii) preclude parties in the instant or prior settlements in the Actions against whom discovery is sought from petitioning the Court for costs and attorneys fees in responding to or complying with such discovery requests pursuant to Rule 26 and Rule 45 of the Federal Rules of Civil Procedure.

g. Entry of Judgment upon Entry of Decree. The judgment set forth in Appendix D will be deemed entered at such time as this Court enters the instant Decree, regardless of whether Appendix D is physically signed.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS AND SETTLING MUNICIPAL GROUP PARTIES

24. Settling Defendants and Settling Municipal Group Parties Covenants. Settling Defendants and Settling Municipal Group Parties Covenant Not to Sue and agree not to assert any claims or causes of action against the State Plaintiffs or the United States or their contractors or employees as to Matters Addressed in this Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from or against: (i) 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; (ii) the New Jersey Spill Fund, based on N.J.S.A. 58:10-23.11k *et seq.*, or any other provision of law; or (iii) the Sanitary Landfill Contingency Fund, based on N.J.S.A. 13:1E-105 *et seq.*, or any other provision of law;

b. any claim against the State Plaintiffs or the United States arising out of response actions or costs at or in connection with the Site, including any claim under the United States Constitution; the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; the Federal Acquisition Regulations, 48 CFR Part 31; or at common law; or

c. any claim against the State Plaintiffs or the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any State claim for relief, relating to the Site. These Covenants Not to Sue by Settling Defendants shall not apply in the event that the United States, on behalf of EPA, or State Plaintiffs brings a claim for relief or issues an order pursuant to the reservations set forth in Paragraph 21 (other than reservations pursuant to Paragraphs 21(a)(i) and 21(a)(ii)), but only to the extent that Settling Defendants' claims arise from the same response action, Response Costs, or damages that the United States, on behalf of EPA, or the State is seeking

pursuant to the applicable reservation. It is further provided that those Settling Defendants against whom such rights are asserted by the United States or the State may not bring a contribution action or claim against any Party to this Decree that is not subject, under the terms of Section VIII (RESERVATION OF RIGHTS BY PLAINTIFFS), to the same reservation asserted by the Plaintiffs.

25. No Approval or Preauthorization of Claim. Nothing in this 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), against the New Jersey Spill Fund pursuant to N.J.S.A. 58:10-23.11k *et seq* , or against the Sanitary Landfill Contingency Fund, pursuant to N.J.S.A. 13:1E-105 *et seq*.

26. Settling Defendants' and Settling Municipal Group Parties' Reservations. Settling Defendants and Settling Municipal Group Parties agree not to assert any claim for relief (including for contribution) that they may have for Matters Addressed, as set out in Paragraph 28, against any other person who has entered into a settlement in these Actions with the State Plaintiffs or the United States by the time this Decree is entered or in connection with entry of this Decree. This waiver shall not apply with respect to: (a) any defense or claim for relief a Settling Defendant subject to a reservation in Section VIII (RESERVATIONS OF RIGHTS BY PLAINTIFFS) may have against another Settling Defendant subject to the same reservation, but only in the event the Plaintiffs assert such a claim against any Settling Defendant pursuant to that same reservation; or (b) any defense or claim for contribution a Settling Defendant or Settling Municipal Group Party may have against any other person, including against another Settling Defendant or Settling Municipal Group Party, in the event any person asserts a claim in connection to the Site against such Settling Defendant or Settling Municipal Group Party and such claim is not: (i) Subject to a Reservation of Rights as set forth in

Paragraph 21; (ii) a Matter Addressed as defined in Paragraph 28; or (iii) otherwise barred by this Decree, any prior consent decree in the Actions or any Order entered by this Court in the Actions. In the event (and only in the event) that the Settling Connecticut Municipalities (as listed in Appendix B), Connecticut Resources Recovery Authority and the Occidental Petroleum Corporation Settling Defendants (collectively, Connecticut Parties, or individually, a Connecticut Party) or any of them are named as defendants or third-party defendants by the Carter Day Parties or Carter Day Carriers in the Compaction Contribution Action, including any declaratory judgment action or Additional Party Claim as defined in Paragraph 5 of Appendix D, the waiver in this Paragraph 26 does not apply to contractual indemnification obligations and guarantees, if any, running from the Compaction Defendants to the named Connecticut Party. In the event (and only in the event) that a Connecticut Party asserts such contractual rights against the Compaction Defendants, any contractual indemnification obligations and guarantees, if any, running from it to the Compaction Defendants will then also be preserved.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Reservations as to Non-parties. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Decree. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

28. Contribution Protection. The Parties agree, and by entering this Decree this Court finds, that Settling Defendants, Settling Municipal Group Parties and Settling Federal Agencies are entitled, as of the date of entry of this Decree, to protection from contribution actions or claims as provided by

Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and N.J.S.A. 58:10-23.11f(b), with respect to Matters Addressed in the Decree. “Matters Addressed” in this Decree shall mean any response action (including the Removal Action) taken or to be taken; and all Response Costs incurred or to be incurred (as well as NRD) including under Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, Section 7003 of RCRA, 42 U.S.C. § 6973, the Spill Act, the Closure Act, and/or the WPCA, the SWMA and/or any other state statute, rule, regulation, ordinance, law or common law in connection with the Site by the United States or State Plaintiffs or any other person.

The Matters Addressed in this Decree shall not include those Response Costs or response actions as to which the United States Plaintiffs and State Plaintiffs have reserved their rights under this Decree (except for claims for failure to comply with this Decree), in the event that the United States or the State Plaintiffs assert rights against Settling Defendants within the scope of such reservations. In the event that the Plaintiffs assert such rights against a Settling Defendant within the scope of the reservations contained in Section VIII (RESERVATION OF RIGHTS BY PLAINTIFFS), those Settling Defendants against whom such rights are asserted may not bring a contribution action or claim against any Party to this Decree that is not subject, under the terms of that Section, to the same asserted reservation. Those Settling Defendants against whom such rights are asserted by Plaintiffs or by a Settling Defendant subject to the same reservations, may bring a contribution action or claim against any Party to this Decree that is subject under the terms of that Section to the same asserted reservation, and against persons other than Parties. In the event any person asserts a claim in connection with the Site against a Settling Defendant or Settling Municipal Group Party that is not: (i) Subject to a Reservation of Rights as set forth in Paragraph 21; (ii) a Matter Addressed as defined in this Paragraph 28; or (iii) otherwise barred by this Decree, any prior consent decree in the Actions

or any Order entered by this Court in the Actions, such Settling Defendant or Settling Municipal Group Party may assert any defense or claim for contribution that they may have against any other person, including against another Settling Defendant or Settling Municipal Group Party.

29. Notice of Contribution Claim. Each Settling Defendant, Settling Federal Agency and Settling Municipal Group Party agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Decree, it will notify the State Plaintiffs and the United States in writing no later than ten (10) days prior to the initiation of such suit or claim. Each Settling Defendant, Settling Federal Agency and Settling Municipal Group Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Decree, it will notify Plaintiffs in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Settling Defendant, Settling Federal Agency and Settling Municipal Group Party shall notify State Plaintiffs and the United States within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Decree.

30. Waiver of Certain Defenses. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of Response Costs, or other relief relating to the Site, Settling Defendants, Settling Federal Agencies and Settling Municipal Group Parties 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, the entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States, EPA or the State Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; *provided*, however, that nothing in this Paragraph affects Section VII (COVENANTS BY

PLAINTIFFS) and Section VIII (RESERVATIONS OF RIGHTS BY PLAINTIFF).

XI. RETENTION OF RECORDS

31. For a period of fifteen (15) years following the entry of this Decree, each Settling Defendant shall preserve and retain all otherwise discoverable records, reports, or information (hereinafter referred to as records) 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 under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. This provision shall not apply with respect to any documents in the public record or confidential documents produced or created for the ADR Process.

32. After the conclusion of the fifteen (15) year document retention period in the preceding Paragraph, Settling Defendants shall notify EPA, Justice and the State Plaintiffs at least ninety (90) days prior to the destruction of any such records, and, upon request by EPA, Justice or the State Plaintiffs, Settling Defendants shall deliver any such records to EPA or NJDEP. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States and State Plaintiffs have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling

Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA or State Plaintiffs pertaining to the Site shall be withheld on the grounds that they are privileged.

33. The Discovery Document Repository and ADR Document Repository established in connection with the ADR Process under CMO No. 2 shall not be deemed to be within the control of the Parties. NJDEP will take custody of the Discovery Document Repository and maintain the Appendix E documents, and afford Settlement Groups and parties to the Compaction Contribution Action and Defaulting Party Action reasonable access to the same. Parties in the Compaction Contribution Action and Defaulting Party Action seeking discovery shall seek discoverable information from the Compaction Defendants before seeking such information for the Discovery Document Repository. Each Settling Defendant hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has conducted the good faith search for documents and made the disclosures called for by the Combe Fill South ADR Process, of information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site and has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or State Plaintiffs or the filing of suit against it regarding the Site; and it has fully complied with any and all EPA and NJDEP requests for information pursuant to §§ 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 § 6972.

34. The State Plaintiffs and United States agree that each Settling Federal Agency (1) is subject to all applicable federal record retention laws, regulations, and policies; and (2) has fully complied with any and all EPA and NJDEP requests for information pursuant to §§ 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.

35. Each of the Settling Municipal Group Parties on its own behalf only acknowledges that it (1) is subject to all applicable record retention laws, regulations and policies, and (2) has fully complied with any and all EPA and NJDEP requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this 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 Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Decree with respect to the United States, EPA, Justice, Settling Federal Agencies, State Plaintiffs, Settling Defendants and Settling Municipal Group Parties, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Chief, Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice (DJ # 90-11-2-1134/1)
Post Office Box 7611
Washington, D.C. 20044-7611

Chief, New Jersey Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency - Region II

290 Broadway - 17th Floor
New York, New York 10007
Attn: Combe Fill South Attorney

Chief, New Jersey Remediation Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency - Region II
290 Broadway - 19th Floor
New York, New York 10007
Attn: Combe Fill South Remedial Project Manager

Northeast Regional Solicitor
United States Department of the Interior
One Gateway Center–Suite 612
Newton Corner, MA 02458

Office of Natural Resource Damage and Restoration
United States Department of the Interior
1849 C Street, N.W. – MS 5130 MB
Washington, D.C. 20240

As to the Settling Federal Agencies:

Chief, Environmental Enforcement Section
Chief, Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice (DJ # 90-11-2-1134/1)
Post Office Box 7611
Washington, D.C. 20044-7611

As to the State Plaintiffs:

Section Chief, Cost Recovery & Natural Resource Damages Section
Division of Law, New Jersey Department of Law & Public Safety
25 Market Street
Post Office Box 093
Trenton, New Jersey 08625-0093

As to Settling Defendants:

As set forth on each Settling Defendants signature page

As to the Settling Municipal Group Parties:

As set forth on each member's signature page

XIII. RETENTION OF JURISDICTION

37. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree and as otherwise provided herein.

XIV. NON-WAIVER/NO ADMISSION

38. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the disclosure to the Court, the United States Department of Justice, on behalf of the United States, and the Office of the Attorney General of New Jersey, the New Jersey Department of Law and Public Safety and the New Jersey Department of Environmental Protection of information, the basis of which was the Court approved ADR process, shall not constitute a waiver by the ADR parties of the confidentiality, work product and attorney-client privilege protections contained in all prior Orders of this Court in the Actions, including but not limited to all Case Management Orders. Except as expressly provided herein, this Decree is entered without admission of liability, adjudication of any issue of fact or waiver of rights, claims or defenses (including privilege or confidentiality) and all rights, claims, and defenses (including any existing privileges, or rights to confidentiality under the confidentiality provisions of the CMO) of the Settling Defendants, Settling Municipal Group Parties and Settling Federal Agencies are preserved in connection with the Actions, the Compaction Contribution Action and Defaulting Party Action.

XV. INTEGRATION/APPENDICES

39. This Decree and its Appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Decree. The Parties

acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained herein. Nothing in the Decree will restrict or limit rights of the Parties to stipulate as to, or seek the entry of Bar Orders or comparable documents consistent with the terms of this Decree. The following Appendices are attached to and incorporated into this Decree: Appendix A is the complete list of all Settling Defendants identified by Settlement Group including the *De Minimis* Settling Defendants. Appendix B is the complete list of all members of the Third-Party Municipal Defendants Group. Appendix C is the form of the Judgment to be entered against any defaulting Third-Party Municipal Defendant upon notice of failure to pay any amount required pursuant to Section V (PAYMENT OF PAST RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY). Appendix D is the Judgment to be entered against the members of the Compaction Defendants Group upon entry of this Decree. Appendix E identifies documents that will be considered part of information and conditions known for purposes of Section VIII (RESERVATION OF RIGHTS BY PLAINTIFFS).

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. Plaintiffs reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Settling Defendants, Settling Federal Agencies and Settling Municipal Group Parties consent to the entry of this Decree without further notice.

41. If for any reason this Court should decline to approve this 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.

42. In addition to the lodging and comment process described in Paragraphs 40 and 41, above, the State Plaintiffs will publish notice of this Consent Decree in the New Jersey Register and on plaintiff NJDEP's website, in accordance with N.J.S.A. 58:10-23.11e.2. The Settling Defendants will publish legal notices in three newspapers of general circulation in the area of the Site for a period of not less than three days, which notices will contain the following information: a) the name and location of the Site; b) the name of each Settling Defendant; c) a summary of the terms of this Decree; and d) the date on which notice was published in the New Jersey Register. The State Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e.2, will arrange for written notice of, and thirty (30) day comment period with respect to, the Decree to all other potentially responsible parties of whom the State Plaintiffs had notice as of the date the State Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with this paragraph.

XVII. SIGNATORIES/SERVICE

43. Each undersigned representative of a Settling Defendant and member of the Third-Party Municipal Defendants Group, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, and the Assistant Commissioner for the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund certifies that he or she is authorized to enter into the terms and conditions of this Decree and to execute and bind legally such Party to this document.

44. Each Settling Defendant, Settling Federal Agency and Settling Municipal Group Party hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree, unless the Plaintiffs have notified Settling Defendants, Settling Federal Agencies and Settling Municipal Group Parties in writing that they no longer support entry of the Decree.

45. Each Settling Defendant and Settling Municipal Group Party 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 that Party with respect to all matters arising under or relating to this Decree. Settling Defendants and Settling Municipal Group Parties hereby agree 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. This Decree may be signed in counterparts.

XVIII. FINAL JUDGMENT

46. Upon approval and entry of this Decree and any Bar Order by the Court, this Decree shall constitute the final judgment between and among the State Plaintiffs and the United States, the Settling Defendants and the members of the Settling Municipal Group Parties as to the Actions and Matters Addressed in this Decree. The Court finds that there is no just reason for delay and therefore, except as to those parts of this Decree which may be enforced in the future, enters this as a final judgment under Federal Rules 54 and 58 of the Federal Rules of Civil Procedure.

SO ORDERED THIS ____ DAY OF _____, 2009.

WILLIAM H. WALLS
United States District Judge