

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, and :
STATE OF CONNECTICUT, :
 :
Plaintiffs, :
 :
v. : Civil No. 3:09CV2096-CFD
 :
ANDERSON & SONS, INC. :
 :
Defendant. :
-----X

CONSENT DECREE

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred at or in connection with the Solvents Recovery Service of New England, Inc. Superfund Site in Southington, Connecticut (“SRS Site”) and the Old Southington Landfill Superfund Site in Southington, Connecticut (“OSL Site”) (collectively, “the Sites”).

B. The State of Connecticut (the “State”) also filed a complaint against the defendant in this Court alleging that the defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Conn. Gen. Stat. § 22a-451. The State in its complaint seeks reimbursement of response costs incurred at or in connection with the Sites.

C. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

D. Settling Defendant asserts that it has a limited ability to pay response costs incurred and to be incurred at the Sites. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether it is financially able to pay response costs incurred and to be incurred at the Sites. Based upon this Financial Information, the United States has determined that Settling Defendant has a limited ability to pay, but is able to pay the amounts specified in Section VI.

E. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter

will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

IV. DEFINITIONS

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

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

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

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

“DOI” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

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

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

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

“Effective Date” shall be the date this Consent Decree is entered as a final judgment under Fed. R. Civ. P. 54 and 58.

“Financial Information” shall mean those financial documents identified in Appendix C.

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

“Natural Resources” shall mean “natural resources” as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” shall mean damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such damages, as provided in Section 107(a)(4)(c) of CERCLA, 42 U.S.C. § 9607(a)(4)(c).

“OSL Site” shall mean the Old Southington Landfill Superfund Site, encompassing approximately 13 acres of the former landfill located on the east side of Old Turnpike Road, in Southington, Hartford County, Connecticut as well as all areas where contamination from the landfill has come to be located in Southington, and depicted generally on the map attached as Appendix B and entitled “Figure 1-1 Study Area Old Southington Landfill Superfund Site.”

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

“Parties” shall mean the United States, the State of Connecticut, and the Settling Defendant.

“Plaintiffs” shall mean the United States and the State of Connecticut.

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

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

“Settling Defendant” shall mean Anderson & Sons, Inc., and its officers, directors and shareholders.

“Sites” shall mean the SRS Site and the OSL Site.

“SRS Site” shall mean the Solvents Recovery Service of New England Superfund Site, encompassing approximately 45 acres, located on Lazy Lane in Southington, CT, including the aerial extent of contamination resulting from operations of the former Solvents Recovery Service of New England facility, and depicted generally on the map attached as Appendix A.

“SRS Trust” shall mean the SRS Site 2008 De Minimis Settlement Trust established under the Trust Agreement attached as Appendix D.

“State” shall mean the State of Connecticut.

“Trust Agreement” shall mean the Trust Agreement for the SRS Site 2008 *De Minimis* Settlement Trust, dated August 12, 2008 and attached as Appendix D.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make cash payments set forth in Section VI to resolve its liability for response costs and for Natural Resource Damages regarding the Sites as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the Reservations of Rights by the United States and the State in Section IX.

VI. PAYMENTS

5. No later than 30 days after the Effective Date, Settling Defendant shall pay a) \$53,290 to the SRS Trust, and b) \$19,710 to EPA.

6. Payment instructions.

a. The payment to be made by Settling Defendant to the SRS Trust under Paragraph 5.a shall be made by bank check made payable to “SRS Site 2008 De Minimis Settlement Trust.” The check, or a letter accompanying each check, shall identify the name and address of the party making payment, and shall be sent to:

R. Thomas Dorsey
de maximis, inc.
450 Montbrook Lane
Knoxville, TN 37919-2705

b. As provided in the Trust Agreement, a portion of the funds in the Trust will be paid to the parties who are performing the remedial action at the SRS Site, pursuant to the Remedial Design/Remedial Action settlement that was entered on or about March 26, 2009 in *United States v. American Hoechst Corp. et al.*, Civ No. 3:08cv1509 (WWE), to partially fund the performance of the remedial action at the SRS Site.

c. The payment to be made by Settling Defendant to EPA under Paragraph 5.b shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referring to the USAO File Number, EPA Site/Spill ID Number 01-58, and DOJ Case Number 90-7-1-23/11, to fund performance of response actions at the OSL Site. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney’s Office in the District of Connecticut following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The total amount to be paid by Settling Defendant pursuant to Paragraph 5.b shall be deposited in the Old Southington Landfill Superfund Site 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 OSL Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA, the State and DOJ in accordance with Section XIII (Notices and Submissions).

VII. FAILURE TO COMPLY WITH CONSENT DECREE

7. Interest on Late Payments. If Settling Defendant fails to make any payment under Section VI by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

8. Stipulated Penalty.

a. If any amount due under Section VI is not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA a stipulated penalty, in addition to the Interest required to be paid to the SRS Trust by Paragraph 7, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall refer to the name and address of the party making payment, the names of the Sites, the EPA Region and EPA Site/Spill ID Numbers 01-08 and 01-58, and DOJ Case Number 90-7-1-23/11 and shall be sent to:

(By regular mail)
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

(By overnight mail)
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to EPA’s Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of its 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 Consent Decree.

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

10. Payments made under this Section shall be in addition to any other remedies or

sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

11. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

12. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with regard to the Sites. With respect to the present and future liability of Settling Defendant, this covenant shall take effect upon receipt of all amounts required to be paid by Settling Defendant to the SRS Trust and EPA pursuant to Section VI (Payments), and any amount due from Settling Defendant to the SRS Trust and EPA under Section VII (Failure to Comply with Consent Decree). This covenant not to sue Settling Defendant is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue Settling Defendant is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information submitted by Settling Defendant is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 22 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

13. In consideration of the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), Paragraphs 16 and 17, the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 107(a) of CERCLA, Conn. Gen. Stats. §§ 22a-432, 22a-451, 22a-6a and 22a-14 through 22a-20, inclusive, relating to the Sites. With respect to the present and future liability of Settling Defendant, this covenant shall take effect upon receipt by the SRS Trust of all amounts required to be paid by Settling Defendant to the SRS Trust and EPA by Section VI (Payments) and any amount due the SRS Trust and EPA under Section VII (Failure to Comply with Consent Decree). This covenant not to sue Settling Defendant is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue Settling Defendant is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information submitted by Settling Defendant is subsequently determined by the State to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 22 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the State's right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate

information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY PLAINTIFFS

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 12. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability of Settling Defendant for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability, based upon Settling Defendant's ownership or operation of the Sites, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Sites, after signature of this Consent Decree by Settling Defendant; and
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites.

15. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, against Settling Defendant if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 27(b), is determined by EPA to be false or, in any material respect, inaccurate.

16. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the State in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendant with respect to:

- a. liability of Settling Defendant for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability, based upon Settling Defendant's ownership or operation of the Sites, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Sites, after signature of this Consent Decree by Settling Defendant; and
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites.

17. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, against Settling Defendant if the Financial Information provided by Settling Defendant, or the financial

certification made by Settling Defendant in Paragraph 27(b), is determined by the State to be false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANT

18. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Sites or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and/or pursuant to Conn. Gen. Stat. §§ 22a-451 and 452, relating to the Sites.

Except as provided in Paragraph 20 (Waiver of Claims) and Paragraph 24 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply to Settling Defendant in the event the United States or the State brings a cause of action or issues an order against Settling Defendant pursuant to the reservations set forth in Paragraph 14(c) - (d) and Paragraph 16(c) - (d), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

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

20. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Sites against any other person who is a potentially responsible party under CERCLA at the Sites. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Sites against Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

21. Except as provided in Paragraph 20, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 20, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Sites

against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

22. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are (a) all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Sites, by the United States or any other person, and (b) Natural Resource Damages, provided, however, that if the United States exercises rights under the reservations in Section IX (Reservations of Rights by Plaintiffs), other than in Paragraphs 14.a (claims for failure to meet a requirement of the settlement) or 14.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

23. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOI, DOJ and the State in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA, DOI, DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

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

XII. RETENTION OF RECORDS

25. Until such time as Settling Defendant has complied with its obligations pursuant to Section VI of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to (a) response actions taken at the Sites or (b) the liability of any person under CERCLA with respect to the Sites, regardless of any corporate retention policy to the contrary.

26. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendant shall notify EPA and DOJ and the State at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ or the State, Settling Defendant shall deliver any such records to EPA or the State. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege

recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title 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. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

27. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Sites since notification of potential liability by the United States or the State or the filing of suit against it regarding the Sites, and that it has fully complied with any and all EPA requests for information regarding the Sites and its financial circumstances 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; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth, as applicable, its circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

XIII. NOTICES AND SUBMISSIONS

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

As to the United States and DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ No. 90-7-1-23/11

As to EPA:

Audrey Zucker
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100 (SES)
Boston, MA 02114-2023

As to DOI:

Mark Barash
Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158

As to the State :

Thomas RisCassi
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

As to Settling Defendant:

Robert L. Quinn
Egan, Flanagan and Cohen, P.C.
67 Market Street
P.O. Box 9035
Springfield, MA 01102-9035

XIV. RETENTION OF JURISDICTION

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

XV. INTEGRATION/APPENDICES

30. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the SRS Site.

“Appendix B” is the map of the OSL Site.

“Appendix C” is a list of the financial documents submitted to EPA by Settling Defendant.

“Appendix D” is the Trust Agreement for the SRS Trust.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XVII. SIGNATORIES/SERVICE

33. Each of the undersigned representatives of Settling Defendant and of Plaintiffs certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

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

35. Settling Defendant 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 its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

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

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

Signature page for Consent Decree in *United States and the State of Connecticut v. Anderson & Sons, Inc.*

FOR THE UNITED STATES OF AMERICA:

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

12/17/09

Date

MARK A. GALLAGHER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-5405

NORA R. DANNAHEY
United States Attorney
District of Connecticut

JOHN B. HUGHES, Bar No. CT05289
Civil Chief
United States Attorney's Office
District of Connecticut
157 Church Street
New Haven, CT 06510
(203) 821-3802

Signature page for Consent Decree in *United States and the State of Connecticut v. Anderson & Sons, Inc.*

7/31/09
Date

IRA LEIGHTON
Acting Regional Administrator, Region 1
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

7/28/09
Date

MICHELLE LAUTERBACK
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100
Boston, MA 02114-2023

7/28/09
Date

WESLEY KELMAN
Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100
Boston, MA 02114-2023

Signature page for Consent Decree in *United States and the State of Connecticut v. Anderson & Sons, Inc.*

FOR THE STATE OF CONNECTICUT:

8/12/09
Date

JOHN M. LOONEY
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Federal Bar # CT08279

Signature page for Consent Decree in *United States and the State of Connecticut v. Anderson & Sons, Inc.*

FOR DEFENDANT ANDERSON & SONS, INC.

6/17/09

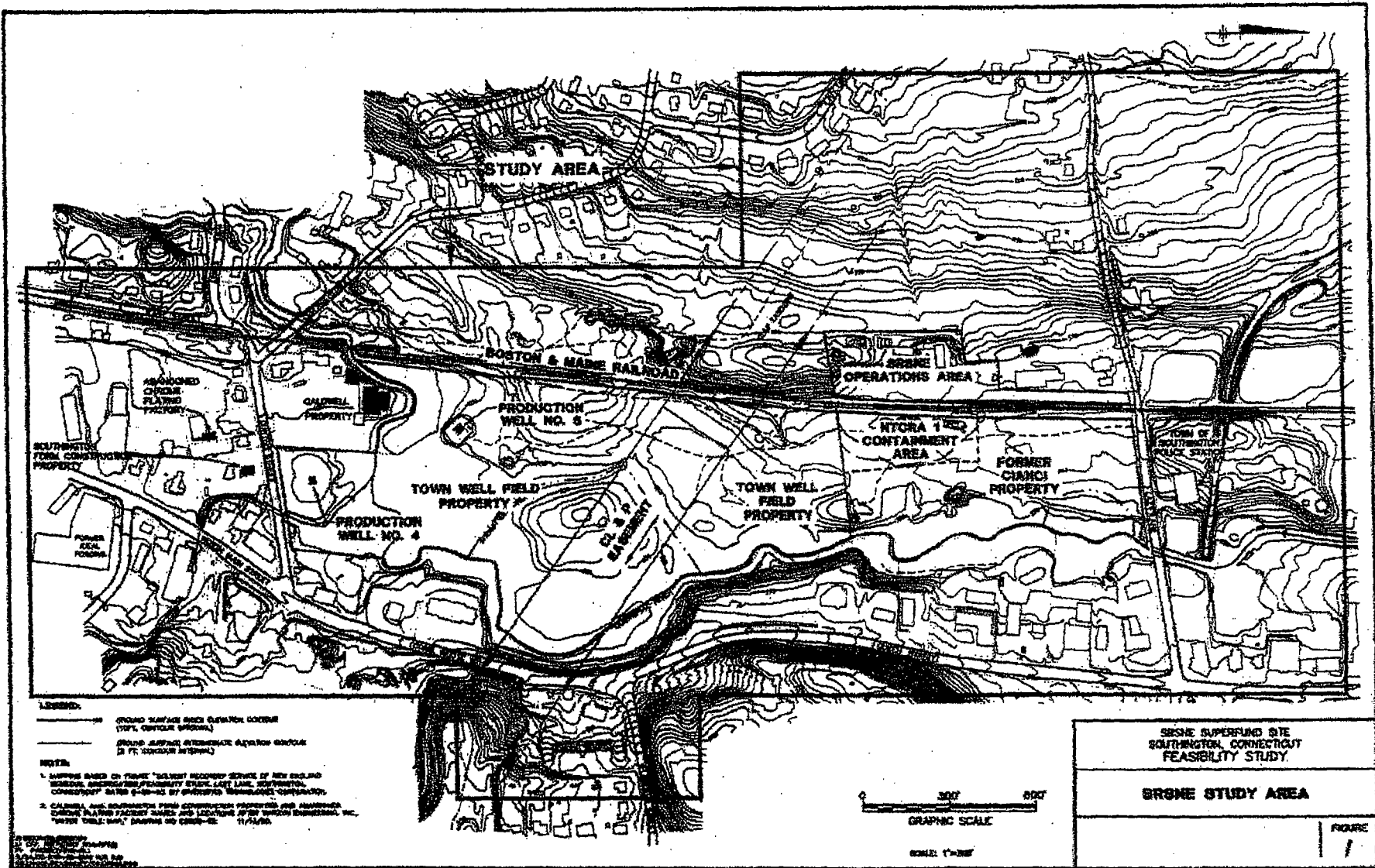
Dated

LAWRENCE SMITH, President
Anderson & Sons, Inc.
c/o Egan, Flanagan and Cohen, P.C.
67 Market Street
P.O. Box 9035
Springfield, MA 01102-9035
Attention: Robert L. Quinn

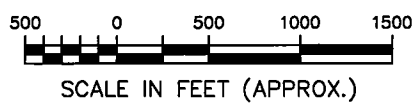
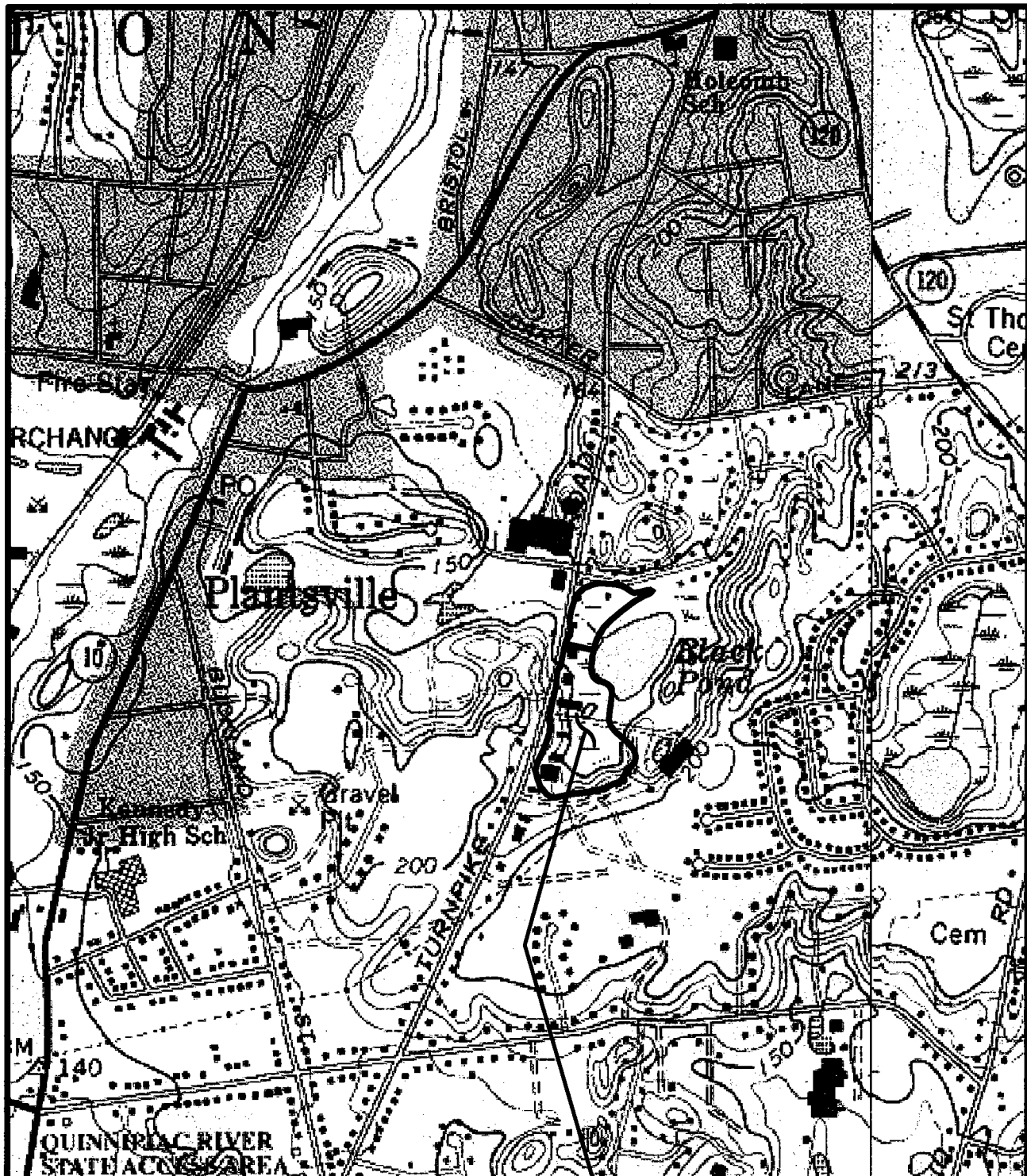
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Robert L. Quinn
Egan, Flanagan and Cohen, P.C.
P.O. Box 9035
Springfield, MA 01102-9035

Appendix A



Appendix B



MAP REFERENCE:
 PORTION OF 7.5 MINUTE SERIES MAP FOR
 THE SOUTHINGTON, CT QUADRANGLE DATED
 1968 PHOTOREVISED 1992, N.G.V.D.1929,
 TAKEN FROM TOPO! CD. VERSION 1.2.4
 ©1998 WILDFLOWER PRODUCTIONS.

**OLD SOUTHINGTON LANDFILL
 SUPERFUND SITE**

**OLD SOUTHINGTON LANDFILL SUPERFUND SITE
 SOUTHINGTON, CT
 SITE LOCATION MAP**

Comm.No.
 61SL702

FIGURE 1



Appendix C – Financial Documents Submitted

- August 11, 2008 Response of Anderson & Sons, Inc. to EPA Information Request of May 13, 2008
- September 17, 2008 Supplemental Response of Anderson & Sons, Inc. to EPA Information Request of May 13, 2008
- November 26, 2008 Second Supplemental Response of Anderson & Sons, Inc. to EPA Information Request of May 13, 2008
- May 21, 2009 Letter of Robert L. Quinn on behalf of Anderson & Sons, Inc.

Appendix D

TRUST AGREEMENT

SRS Site 2008 *De Minimis* Settlement Trust

On this 12th day of August, 2008, the Solvents Recovery Service of New England, Inc. Site Group, an unincorporated association of the Performing Parties (as hereinafter defined), (the "PRP Group"), having a mailing address c/o Robert C. Kirsch, Esquire, Wilmer Hale, 60 State Street, Boston, Massachusetts 02019, and R. Thomas Dorsey, having a mailing address of de maximis, inc., 450 Montbrook Lane, Knoxville, Tennessee 37919-5052, (the "Trustee") hereby agree as follows:

WHEREAS, the Solvents Recovery Service of New England, Inc. Superfund Site ("Site") is an approximately 45-acre former solvent recovery facility located in Southington, Connecticut, and is now a federal Superfund Site;

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the State of Connecticut Department of Environmental Protection ("State") have incurred and will continue to incur response costs in connection with the Site;

WHEREAS, a number of potentially responsible parties ("PRPs") at the Site are entering into a Remedial Design/Remedial Action Consent Decree ("RD/RA Decree") with EPA providing for them to perform certain response actions at the Site pursuant to the RD/RA Decree ("Performing Parties").

WHEREAS, a number of PRPs at the Site who contributed less than 200,000 gallons of waste to the Site and who do not intend to participate in the RD/RA Decree (the "*De Minimis* Eligible PRPs") wish to pay their allocated shares of response costs incurred and to be incurred in connection with the Site and to resolve their liability to the United States, the State and the Performing Parties;

WHEREAS, the United States, the State and approximately ___ of the *De Minimis* Eligible PRPs at the Site (the "*De Minimis* Parties") now seek to enter into a settlement (the "*De Minimis* Settlement") pursuant to CERCLA Section 122(g), 42 U.S.C. §9622(g), which will resolve the *De Minimis* Parties' responsibility for past and future response costs at the Site and their liability to the United States, the State and Performing Parties in connection with the Site;

WHEREAS, the proposed *De Minimis* Settlement will provide for: (1) the *De Minimis* Parties to send their settlement payments to a trust pending the U.S. District Court for the District of Connecticut's (the "Court") approval of the *De Minimis* Settlement, (2) distribution of the *De Minimis* Parties' payments to the United States, the State and Performing Parties, upon the Court's approval of the *De Minimis* Settlement.

NOW, THEREFORE, the Trustee declares as follows:

1. Establishment of Trust. The Trustee promptly shall establish a segregated trust account, which shall be known as the "SRS Site 2008 *De Minimis* Trust" ("Trust").

2. Declaration of Purpose. The Trust is established and shall be administered by the Trustee for the purpose of holding, investing and disbursing funds collected from the *De Minimis* Parties that enter into the *De Minimis* Settlement among the United States, the State and the *De Minimis* Parties regarding the Site. The United States, the State, and the PRP Group are express beneficiaries of this Trust.

3. Payments

a. The Trustee shall have no authority or responsibility hereunder to collect any contributions to the Trust from any party and shall have no responsibility hereunder or otherwise with respect to the *De Minimis* Parties' compliance with the terms of the *De Minimis* Settlement.

b. The Trustee shall promptly deposit into the Trust all payments received from *De Minimis* Parties. The Trustee shall maintain a record of the name and address of each *De Minimis* Party making a payment together with the amount and date of the payment.

4. Principal, Interest and Expenses of Trust

a. All monies deposited in the Trust or earned by the investment or reinvestment of such monies ("Trust Funds") shall remain in the Trust and may not be withdrawn by any person, except to make the refunds required by Paragraph 6, or payments required by Paragraph 7, or to pay the Trustee's fees and expenses and the tax return preparation expenses and tax filing as provided in this paragraph and in Paragraphs 12 and 14.

b. The Trust Funds shall be used by the Trustee to pay taxes incurred by the Trust as well as any tax return preparation expenses, and tax filing fees. The remaining Trust Funds will remain in the Trust and may not be withdrawn by any person, except to make the refunds provided under Paragraph 6 or the payments provided under Paragraph 7.

c. The Trustee may deduct from the Trust Fund such fees and expenses of the Trustee as are described in the Schedule attached hereto.

5. Investment of Trust Funds. The Trustee shall deposit and hold all Trust Funds in an account and shall invest such funds in Western Asset Municipal Money Market Fund (TFMX) unless otherwise directed in writing by the Chair of the PRP Group. All earnings received from the investment of the Trust Funds shall be credited to, and shall become a part of, the Trust, (and any losses on such investments shall be debited

to the Trust). The Trustee shall have no liability for any investment losses, including without limitation any market loss on any investment liquidated prior to maturity in order to make a payment required hereunder.

6. Refunds from the Trust. Promptly upon receipt by the Trustee of a notice from the United States stating that (a) the United States and/or the State have decided not to enter into the *De Minimis* Settlement, and/or (b) the *De Minimis* Settlement has not been approved and entered by the Court, the Trustee shall refund all contributions previously made to the Trust by the *De Minimis* Parties. Any such refund shall include the original principal amount of the payment and any earnings from the investment of such amounts, less accrued taxes and expenses paid.

7. Disbursements from the Trust.

a. Within thirty (30) days after receipt of a written notice from the United States, the Trustee shall disburse \$ 2,234,000 of the Trust Funds to EPA in payment of EPA's Past Response Costs pursuant to Paragraph 58 of the RD/RA Decree; \$2,625,000 of the Trust Funds to the State in payment for Natural Resource Damages pursuant to Paragraph 64 of the RD/RA Decree, and \$200,000 of the Trust Funds to the U.S. Department of the Interior ("DOP") in payment for Natural Resource Damages pursuant to Paragraph 63 of the RD/RA Decree. If the Trust Funds are not sufficient to pay said amounts in full, the Trustee shall disburse the available Trust Funds on a pro rata basis to the aforesaid parties in partial satisfaction of the said payments which are due to them. The remaining Trust Funds, if any, shall be disbursed to the PRP Group, or, if so instructed by the PRP Group, shall be kept in this Trust to be invested and disbursed from time to time at the direction of the PRP Group for purposes of performing and administering the performance of the Work under the Consent Decree (the "Work"), provided, however, that the Performing Parties have entered into the RD/RA Consent Decree with the United States providing for the performance of the remedy regarding the Site, failing which the remaining Trust Funds shall be disbursed at the direction of the United States. If, following entry of the RD/RA Consent Decree, the PRP Group elects as aforesaid to have some or all of the remaining Trust Funds kept in this Trust to be invested and disbursed from time to time at the direction of the PRP Group, then the provisions set forth in Appendix I to this Trust shall automatically take effect and shall be controlling over any other contrary provisions set forth in this Trust.

b. The payment to EPA shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, and in accordance with instructions provided to the Trustee by the Financial Litigation Unit of the United States Attorney's Office for the District of Connecticut. The payment shall reference the USAO File Number, EPA Site/Spill ID

Number 01-08, and DOJ Case Number 90-7-1-23/8. At the time of any payment, the Trustee shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Paragraph 8, and to the EPA Cincinnati Finance Office by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268, and by email at acctsreceivable.cinwd@epa.gov.

c. All other payments under this Paragraph shall be made by check, shall be accompanied by a transmittal letter and shall be delivered to the payee as provided in Paragraph 8. The payment to the United States on behalf of EPA shall be made to the SRS Site Special Account of the EPA Hazardous Substances Superfund. The payment to the U.S. Department of the Interior shall be made to U.S. Treasury. The payment to the State shall be made to Treasurer, State of Connecticut. The payment to the PRP Group shall be made as directed by the Chair of the PRP Group. The Trustee shall send a copy of each check and transmittal letter to the United States, the State and the PRP Group as provided in Paragraph 8.

8. Notices. All notices, demands, and requests given or required to be given hereunder shall be deemed given if delivered by hand, as evidenced by a signed receipt; delivered by a recognized overnight courier or by express mail, as evidenced by an appropriate receipt; or mailed by registered or certified United States mail, postage prepaid, return receipt requested, and shall be addressed as follows:

As to the United States:	Chief, Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Ref: D.J. No. 90-7-1-23/8 and Chief, Environmental Defense Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 23986 Washington, D.C. 20026-3986 and James T. Owens, III, Director
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	Office of Site Remediation & Restoration U.S. EPA, Region I One Congress Street, Suite 1100 (HIO) Boston, MA 02114-2023
As to EPA:	Karen Lumino EPA Project Coordinator U.S. EPA, Region I One Congress Street, Suite 1100 (HBT) Boston, MA 02114-2023
As to the Regional Financial Management Officer:	David Tornstrom U.S. EPA, Region I One Congress Street, Suite 1100 (MCO) Boston, MA 02114-2023
As to DOI:	Department of the Interior Natural Resource Damage Assessment and Restoration Fund Attn: Restoration Fund Manager 1849 C Street, N.W. Washington, DC 20240
As to the State:	John M. Looney Assistant Attorney General Office of the Attorney General 55 Elm Street Hartford, CT 01606
As to the PRP Group:	SRSNE Site PRP Group, c/o Robert C. Kirsch, Esquire, Wilmer Hale, 60 State Street, Boston, Massachusetts 02019
As to the Trustee:	R. Thomas Dorsey, de maximis, inc., 450 Montbrook Lane, Knoxville, Tennessee 37919-5052
As to the Hazardous Substances Superfund:	Cincinnati Financial Officer 26 Martin Luther King Drive Cincinnati, Ohio 45278

9. Concerning the Trustee. The Trustee shall act as a trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustee in good faith, all persons shall look solely to the assets of the Trust and not to the Trustee personally. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, including in following instructions provided pursuant to the provisions of this Trust Agreement with respect to the payment of monies hereunder. The Trust shall indemnify and hold harmless the Trustee from and against any personal liability by reason of any action or conduct in its official capacity, made in good faith. The Trustee (a) shall not be responsible for the *De Minimis* Settlement, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (b) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Trust Agreement on its part to be performed, and no implied duties or obligations of any kind shall be read into this Trust Agreement against or on the part of the Trustee; (c) may consult counsel satisfactory to it, including in-house counsel, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. In no event shall the Trustee be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Trustee has been informed of the likelihood of such loss or damage and regardless of the form of action.

10. Disputes. In the event a dispute of any kind arises in connection with this Agreement (including any dispute concerning indemnification of the Trustee), the Trustee may, in his/her sole discretion, elect to commence an interpleader action and pay all or any portion of the Trust Funds to the Court and provide a complete accounting of all monies paid into the Trust or paid out of the Trust by the Trustee. In the event of such payment, it is understood that Trustee will have no further obligation to the *De Minimis* Parties, the State, and the United States and/or the PRP Group with respect to the amount so paid.

11. Inalienability of Interests of Beneficiaries. The interest of each beneficiary in the income or principal of the Trust hereunder shall be free from the control or interference of any creditor and shall not be subject to assignment, attachment, anticipation or alienation.

12. Tax Treatment. It is intended that this Trust be a Qualified Settlement Fund under Internal Revenue Code Section 468B and Reg. 1.468(B) and taxable as a so-called complex trust to which Internal Revenue Code Sections 661, 662 and 663 apply and not as a partnership, corporation or grantor trust, that is, a trust whose property is deemed to be owned by one or more grantors or other persons pursuant to one or more of the Internal

Revenue Code Sections 671 through 678. The Trustee (or a tax administrator engaged by the Trustee at the expense of the Trust) shall file tax returns for the Trust on the assumption that it is a complex trust, unless and until it is determined or the Trustee otherwise has reason to believe the Trust is other than a complex trust. In the event this Trust is determined, or is in the sole judgment of the Trustee at risk of being determined, to be other than a trust which is taxable as such a complex trust and it is prudent to reorganize the Trust so that it shall be such a complex trust, then the Trustee is authorized to execute such amendment to this Trust Agreement, restatements of this Trust Agreement or new trust agreement, instruments of assignment, plans of reorganization and other documents as are appropriate to enable the Trust or a successor to the assets of the Trust to be a trust which is taxable as such a complex trust; provided always, in no event shall the effect of any such reorganization or other action be to change the purposes hereof, divert the assets of this Trust otherwise than for its original purposes set forth herein or enlarge the powers or responsibilities of the Trustee. [Note: This Paragraph is subject to revision to address Trust-related tax consequences, provided that such revision shall be approved by EPA and shall not adversely impact the tax treatment of this Trust from the perspective of the De Minimis Parties].

13. Accounting. By forty-five (45) days after the lodging of the Consent Decree, the Trustee shall prepare a statement setting forth each payment received by the Trustee, the identity of the *De Minimis* Party making such payment, the date such payment was received, the total amount of Trust Funds in the Trust, the amount of any interest and/or income earned on the Trust Funds, and the amount of any taxes, fees and expenses paid by the Trustee. The Trustee shall prepare an updated accounting quarterly thereafter until the Trust is terminated, which accounting shall be prepared in accordance with generally accepted accounting procedures. Said accountings shall be sent to the United States, the State and the Group as provided in Paragraph 8.

14. Trustee Compensation. The Trustee shall receive compensation for its services as a Trustee under this Trust Agreement pursuant to the Fee Schedule attached hereto. The Fee Schedule shall be binding upon the Trustee and the PRP Group, and any change to the Fee Schedule shall become effective only upon the written approval of the PRP Group and the Trustee. The PRP Group shall be responsible for the Trustee's compensation.

15. Appointment of Successor Trustee.

a. The Trustee may resign at any time by delivering his/her resignation, in writing, to the United States, such resignation to take effect upon the appointment of a successor Trustee.

b. The PRP Group may remove the Trustee at any time, by delivering notice of such removal in writing to the Trustee, such removal to take effect ten days thereafter, or on such later date that may be specified in the notice.

c. Any vacancy in the office of the Trustee created by bankruptcy, insolvency, death, disability, resignation, removal or succession, as provided herein, shall be filled by an appointment in writing of a successor Trustee.

d. Any successor Trustee shall be appointed by the PRP Group, with approval by EPA.

e. Acceptance of appointment as a successor Trustee shall be in writing and shall be mailed to the PRP Group as provided in Paragraph 8.

f. A successor trustee shall have all of the rights, powers, duties, authority and privileges as if initially named as a Trustee hereunder.

g. A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Trust Agreement in the custody of the PRP Group and a copy shall be furnished to the United States.

16. Choice of Law. This Trust Agreement shall be administered, construed, and enforced according to the laws of the State of Connecticut, except to the extent that Federal law shall apply to questions arising under CERCLA or the National Contingency Plan, including any amendment thereto.

17. Consent to Jurisdiction and Services. The Trustee absolutely and irrevocably consents and submits to the jurisdiction of the courts of the State of Connecticut and of any Federal court located in said State in connection with any actions, proceedings or disputes arising out of or relating to this Agreement. In any such action, proceeding or dispute, the Trustee hereby absolutely and irrevocably waives personal service of any summons, complaint, declaration or other process provided that the service thereof is made by certified or registered mail directed to the Trustee at its address in accordance with Paragraph 8.

18. Termination. This Agreement will terminate upon the disbursement of all of the Trust Funds in accordance with the provisions of Paragraph 7.

19. Modifications. This Agreement may not be altered or modified without the express written consent of the United States and the PRP Group.

20. Reproduction of Documents. This Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, and (b) certificates and other information previously or hereafter

furnished, may be reproduced by any means. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by the Trustee in the regular course of business, and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

21. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Trustee hereunder has caused this Declaration to be executed as of the day and year first written above.

**R. Thomas Dorsey, de maximis, inc., 450 Montbrook Lane,
Knoxville, Tennessee 37919-5052**

As joined in by the undersigned, who hereby consents to serving as Trustee and agrees to be bound by and perform in accordance with the terms and provisions of this Trust Agreement at such time as the provisions of Appendix I to this Trust take effect in accordance with Paragraph 7(a) of this Trust Agreement.

**Bennie Underwood, de maximis, inc., 450 Montbrook Lane,
Knoxville, Tennessee 37919-5052**


de maximis, inc.

**PROFESSIONAL SERVICES RATE SCHEDULE
JANUARY 1, 2008**

FUND ADMINISTRATION

Fund Administrator/Trustee	\$ 150.00
Fund Officer	\$ 115.00
Accountant	\$ 100.00
Account Support	\$ 60.00

SUPPORT SERVICES

Records Coordinator/Administrative Support	\$ 50.00 - 65.00
Word Processing Support	\$ 45.00 - 52.00

PERSONNEL CHARGES

- Management and technical personnel time charges will be invoiced according to the Rate Schedule above.
- Personnel time charges for direct project support activities such as report typing and reproduction are invoiced according to the Rate Schedule above. Charges include indirect support staff, text processing, equipment, computer connect charges, and nominal communication charges.
- All time is rounded to the nearest one-half hour.

TRAVEL AND LIVING EXPENSES

- Travel and living expenses are charged at cost plus 10%.

OTHER CHARGES AND REIMBURSABLE EXPENSES

- All project-related purchases will be invoiced at cost plus 10%, including materials, subcontractor costs, fees, equipment purchased, and other costs incurred specifically for the project.
- A miscellaneous charge equal to 5% of professional services billed will be added to cover routine project-related telephone usage, postage, and photocopying.
- Non-routine project-related charges such as overnight mailings, outside copying charges, and teleconferences will be invoiced at cost plus 3%.
- A nominal fee for document retention and preservation will be charged to each project on a yearly basis as necessary to cover the cost of such activity.

Fees are subject to change on an annual basis. Any change will be subject to written approval from the client.

Payment terms are 30 days from invoice date. As a means of encouraging timely payment of our invoices, de maximis reserves the right to charge a finance fee of 1.5% per month on the unpaid balance for invoices that remain unpaid for more than 30 days..

APPENDIX I TO THE SRS SITE 2008 DE MINIMIS SETTLEMENT TRUST

I. ADDITIONAL TRUSTEE:

Bennie Underwood, having a mailing address of de maximis, inc., 450 Montbrook Lane, Knoxville, Tennessee 37919-5052, shall automatically be added as a second Trustee of this Trust, and all references in this Trust Agreement to the "Trustee" shall mean and refer to all of the Trustees serving hereunder.

II. THE FOLLOWING NEW PARAGRAPH 2.A SHALL BE ADDED:

"2.A Definitions. As used in this Trust Agreement, the following terms shall have the following meanings:

- a. The term "Executive Committee" shall mean the then serving Executive Committee of the PRP Group.
- b. The term "PRP Group" or "Group" shall mean the SRSNE Site Group established pursuant to the Participation Agreement. Unless otherwise specifically provided, when used in this Trust Agreement, the term PRP Group or Group shall include the Executive Committee, which is authorized to act for and on behalf of the Group.
- c. The term "the Work" shall have the meaning assigned to that term in the RD/RA Decree.
- d. The term "Participation Agreement" shall mean the agreement entered into by the Members of the PRP Group and provided to the Trustee, which agreement sets forth the manner in which Members of the PRP Group will undertake to comply with the RD/RA Decree.
- e. The term "EPA" shall mean the United States Environmental Protection Agency.
- f. The term "State" shall mean the State of Connecticut."

III. PARAGRAPH 5 SHALL BE DELETED IN ITS ENTIRETY AND THE FOLLOWING IS SUBSTITUTED IN ITS STEAD:

"5. Investment of Trust Funds. Subject to the limitations set forth below regarding "Permitted Investments," the Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust Funds invested in one or more accounts which shall be treated as a single fund without distinction between principal and income. The Trustee may engage the services of an investment adviser or manager, may rely on the advice of such adviser or manager, and may delegate investment decision-making authority to such adviser or manager with respect

to management of the Trust Funds. The Trustee shall not be personally liable for any action or inaction taken in good faith reliance on the advice of such adviser or manager, nor for delegation in good faith of investment decision-making authority to such adviser or manager, unless attributable to the Trustee's gross negligence or willful misconduct. Notwithstanding the foregoing, the Trustee shall invest and reinvest the principal and income of the Trust in only one or more of the following, which shall constitute "Permitted Investments":

- a. any obligation issued or guaranteed by the United States of America or any State or territory thereof, or any agency or instrumentality of the foregoing, or any money fund which invests solely in the foregoing obligations;
- b. any obligation issued or guaranteed by any municipality in the United States, or any agency or instrumentality thereof, which is rated A (or better) by Standard & Poor's corporation or Moody's Investor's Service, Inc. at the time of investment;
- c. certificates of deposit of, accounts with, repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000;
- d. certificates of deposit of accounts with, or other obligations of any bank or corporation endowed with trust powers, provided that the full amount of any such certificate of deposit, account, or other obligation is insured by FDIC or FSLIC; and
- e. such other investments or investment vehicles as may be recommended from time to time by the Trustee's professional investment advisor with a view to assuring adequate current funds for the short term costs of the Work, while seeking a reasonable (in such investment advisor's professional opinion) market-based return on investment designed to fund the long-term implementation of the Work, provided, however, that (i) at no time shall any portion of the Fund be invested in stocks, bonds, or other equity or debt instruments issued by any Member of the PRP Group or any affiliate of any such Member unless such stocks, bonds or other instruments are part of the holdings of a mutual fund or other investment vehicle which is managed by a professional manager not controlled by the Trustee or any of the Members of the PRP Group.

IV. THE FOLLOWING NEW PARAGRAPH 16 SHALL BE ADDED:

"16. Express Powers of the Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust Agreement or by law, the Trustee is expressly authorized and empowered:

- a. Payment of Expenses of Administration. To incur and pay any and all charges, taxes, and expenses upon or connected with the Trust and the Trust Funds in the discharge of their fiduciary obligations under this Trust Agreement.
- b. Retention of Property. To hold and retain all or any part of the Trust Funds in the form in which the same may be at the time of the receipt by the Trustee, as long as they shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.
- c. Preservation of Principal. Notwithstanding any other provision in this Trust Agreement, to at all times hold, manage, invest, and reinvest the Trust Funds in a manner designed to preserve the accrued income and principal of the Trust Fund for the purposes of the Trust Funds.
- d. Retention of Investment Adviser and Other Consultants. To engage the services of (and pay compensation to) an investment adviser, accountants, agents, managers or other consultants with respect to the management of investments of the Trust Funds, the management of the Trust Funds, or any other matters.
- e. Execution of Documents of Transfer. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- f. Litigation. To institute litigation in the name of the Trust upon direction from the PRP Group, and to cooperate with the Group in its prosecution or defense of litigation.
- g. Discretion in Exercise of Powers. To do any and all other acts which they shall deem proper to effectuate the purposes hereof and to exercise the powers specifically conferred upon the Trustee by this Trust Agreement.”

V. THE FOLLOWING NEW PARAGRAPH 17 SHALL BE ADDED:

“17. Instructions to the Trustee. Notwithstanding anything herein to the contrary, the Trustee is hereby directed to do the following in addition to other duties set forth in other provisions of this Trust Agreement:

- a. Have prepared quarterly financial reports during performance of the construction portion of the Work describing the manner in which the assets of the Trust are then invested and the current market value of such assets, as well as the

obligations, income, and expenses of the Trust. Copies of such reports shall be transmitted in writing to the PRP Group, to the Group's Project Coordinator (provided the Trustee has received notice of the name and address of said Project Coordinator from the Executive Committee) and, upon request, to EPA.

- b. Have prepared annual financial statements during performance of the construction portion of the Work and the operation and maintenance portion of the Work describing the manner in which the assets of the Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Trust. All financial statements shall be prepared on a cash basis, and shall be in accordance with Generally Accepted Accounting Principles, applied on a consistent basis. Copies of such statements shall be transmitted in writing to the PRP Group, to the Group's Project Coordinator (provided the Trustee has received notice of the name and address of said Project Coordinator from the Executive Committee) and to EPA.
- c. Advise, consult and confer with and otherwise inform the PRP Group upon any request by the Group or with respect to matters arising out of this Trust Agreement, administration of the Trust, or any other matter which the Trustee(s), in their discretion, deem appropriate to bring to the attention of the PRP Group.
- d. Have maintained records of all actions taken by the Trustee with respect to matters arising out of this Trust Agreement or administration of the Trust. Copies of said records shall be provided to the PRP Group upon request, and upon termination of this Trust said records shall be transmitted, together with all other records of the Trustee, to the PRP Group.

The Trustee shall have the right to assume and fully rely upon, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any Member of the Group has occurred."

VI. THE FOLLOWING NEW PARAGRAPH 18 SHALL BE ADDED:

"18. Special Provisions Relating to EPA's Takeover of the Work. If, at any time during the term of this Trust Agreement, EPA implements a "Work Takeover" pursuant to the terms of the RD/RA Decree and intends to direct payment of monies from the Trust Funds to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Paragraph 7 hereof shall immediately be suspended, and the Trustee shall thereafter make payments from the Trust Funds only to such person or persons as EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the RD/RA Decree. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements from the

Trust Funds at the request of the PRP Group, including its representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the RD/RA Decree, EPA shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Paragraph 7 hereof shall be reinstated."

VII. EXISTING PARAGRAPHS NUMBERED 16 THROUGH 21 SHALL BE RENUMBERED 19 THROUGH 24 RESPECTIVELY.