

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

**UNITED STATES OF AMERICA
and COMMONWEALTH OF
MASSACHUSETTS,**

Plaintiffs,

v.

**BOSTON & MAINE
CORPORATION, BNZ
MATERIALS, INC., and
MASSACHUSETTS BAY
TRANSPORTATION
AUTHORITY,**

Defendants.

CIVIL ACTION NO. _____

J. In September 1987, EPA issued a Phase IA Remedial Investigation ("RI") Report for the Site. As a result of the Phase IA RI, EPA divided the Site into three Operable Units.

K. A Consent Decree governing the remediation of the B & M Lagoons, the first Operable Unit at the Site, was entered by the United States District Court for the District of Massachusetts on September 13, 1990.

L. A Consent Decree governing the remediation of the Shaffer Landfill, the second Operable Unit at the Site, was entered by the United States District Court for the District of Massachusetts on April 17, 2001.

M. In 1997, EPA completed a supplemental RI Final Report addressing Operable Unit 3 at the Site.

N. In May 2004, EPA issued a Feasibility Study ("FS") Report for Operable Unit 3 at the Site.

O. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action for Operable Unit 3 on June 6, 2004, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

P. The decision by EPA on the Remedial Action to be implemented at Operable Unit 3 is embodied in a final Record of Decision ("ROD"), executed on September 30, 2004, on which the Commonwealth gave its concurrence on September 24, 2004. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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

R. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, and implementation of this Consent Decree will expedite the cleanup of Operable Unit 3 and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

T. The Parties intend, and the Court by entering this Consent Decree finds, that the Complaints filed by the United States and the Commonwealth in this action are civil actions under Section 107 of CERCLA, as contemplated in Section 113(f)(1) of CERCLA, and that this Consent Decree is a judicially-approved settlement that resolves the liability of the Settling Defendants as set forth herein as provided for in Section 113(f)(2) of CERCLA.

NOW, THEREFORE, it is hereby 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 pendent subject matter jurisdiction over the claims arising under the laws of the Commonwealth. This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. The Appropriate Area of Concern Defendant shall provide a copy of this Consent Decree to each contractor it hires to perform the Work (as defined below) required by this Consent Decree and to each person representing it with respect to Operable Unit 3 or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Appropriate Area of Concern Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired by the Appropriate Area of Concern Defendant to perform any portion of the Work required by this Consent Decree. The Appropriate Area of Concern Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Appropriate Area of Concern Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3) and of Section 5(c)(3) of Chapter 21E.

IV. DEFINITIONS

4. 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. With respect to the Commonwealth's claims under Chapter 21E, terms used in this Consent Decree which are defined in Chapter 21E or the MCP shall have the meanings assigned to them in Chapter 21E or the MCP to the extent they are not defined in or inconsistent with CERCLA or the NCP. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Affected Property" shall mean any property owned or controlled by one or more of the Settling Defendants that is located within the Site, all or any portion of which is or will be subject to response actions under this Consent Decree.

"Appropriate Area of Concern Defendant" shall mean, for any Area of Concern, the Settling Defendant who is responsible for the performance of the Work at that Area of Concern

pursuant to Schedule A. If more than one Settling Defendant is identified on Schedule A as being responsible for performing the Work at a particular Area of Concern, then the Appropriate Area of Concern Defendant with respect to that Area of Concern shall mean all Settling Defendants so identified.

"Area of Concern" or "AOC" shall mean any of the seven individual study areas where the source control remedies described in the ROD will be implemented. The AOCs are identified and described in Section E of the ROD. Appendix C of this Consent Decree is a map showing the seven AOCs for OU3 and the general boundaries of such AOCs. In general terms, AOC 1 is that portion of the Site known as B&M Railroad Landfill, AOC 2, RSI Landfill, AOC 3, B& M Locomotive Shop Disposal Area, AOC 4, Old B&M Oil/Sludge Recycling Area, AOC 5, Contaminated Soils Area, AOC 6, Asbestos Landfill, and AOC 7, Asbestos Lagoons.

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

"Commonwealth" shall mean the Commonwealth of Massachusetts.

"Consent Decree" shall mean this Decree and all schedules to this Decree, and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix or schedule, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. 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.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 119.

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

"Institutional Controls" shall mean those aspects of the response action involving legal and administrative measures, but not engineering controls, required to ensure the long-term effectiveness and protectiveness of response actions performed at the Site.

"Interest," shall mean: for payments owed to the United States in accordance with 42 U.S.C. § 9607(a), 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; and for payments owed to the Commonwealth, the rate set forth in M. G. L. c. 21E, § 13. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest for payments owed to the United States is subject to change on October 1 of each year.

"Massachusetts Contingency Plan" or "MCP" shall mean the regulations promulgated pursuant to M. G. L. c. 21E, codified at 310 C.M.R. 40.0000, et seq., and any amendments thereto.

"MassDEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

"M. G. L. c. 21C" shall mean the Massachusetts Hazardous Waste Management Act, as amended.

"M. G. L. c. 21E" or "Chapter 21E" shall mean the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, as amended.

"Municipal sewage sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

"Municipal solid waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

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

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan and Institutional Controls Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW), including without limitation all inspection and monitoring requirements relative to Institutional Controls.

"Operable Unit 3" or "OU3" shall mean the third operable unit at the Site identified in EPA's Record of Decision dated September 30, 2004, consisting of the seven identified Areas of Concern (AOCs), and all response actions, including without limitation, operation and maintenance activities, necessary in connection therewith. The Areas of Concern addressed by OU3 are depicted generally in the map attached hereto as Appendix C.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the Commonwealth of Massachusetts and the Settling Defendants.

"Preauthorization Decision Document" shall mean the document attached hereto as Appendix G.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section L of the ROD and Section IV of the SOW.

"Plaintiffs" shall mean the United States and the Commonwealth of Massachusetts.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU3 at the Site signed on September 30, 2004, by the Regional Administrator, EPA Region 1-New England, or his delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed and approved pursuant to Paragraph 12 of this Consent Decree, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed and approved pursuant to Paragraph 11 of this Consent Decree, and any amendments thereto.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendant(s)" shall mean those Parties identified in Appendix E.

"Site" shall mean the Iron Horse Park Superfund Site, encompassing approximately 553 acres, located in Billerica, Middlesex County, Massachusetts and depicted generally on the map attached as Appendix D.

"State" shall mean the Commonwealth of Massachusetts.

"State Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation, and costs incurred in the management or administration of Institutional Controls following implementation including, but not limited to, costs related to Institutional Controls compliance and enforcement activities and any amendment or other modification of the Institutional Controls), XV, and Paragraph 20 of Section XXII. State Future Response Costs shall also include all State Interim Response Costs, and all Interest on the State Past Response Costs that has accrued pursuant to M. G. L. c. 21E, § 13, during the period from February 6, 2007 to the date of entry of this Consent Decree.

"State Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the State in connection with Operable Unit 3 between February 6, 2007, and the Effective Date, or (b) incurred by the State on or after January 1, 2007 and prior to the Effective Date, but paid after the Effective Date.

"State Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth paid at or in connection with Operable Unit 3 through February 6, 2007, plus Interest on all such costs which has accrued pursuant to M. G. L. c. 21E, § 13, through such date.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at each AOC of

Operable Unit 3, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by each Appropriate Area of Concern Defendant to supervise and direct the implementation of the Work under this Consent Decree pursuant to Schedule A.

"United States" shall mean the United States of America.

"United States Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 20 of Section XXII. United States Future Response Costs shall also include all United States Interim Response Costs.

"United States Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with Operable Unit 3 between April 9, 2007 and the Effective Date, or (b) incurred by the United States prior to the Effective Date but paid after that date.

"United States Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with Operable Unit 3 through April 9, 2007, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" or "oil" under the Massachusetts Oil and Hazardous Release Prevention and Response Act, M. G. L. c. 21E, § 2; and (5) any "hazardous waste" under the Massachusetts Hazardous Waste Management Act, M. G. L. c. 21C, § 2.

"Work" shall mean all activities, including without limitation all Operation and Maintenance, an Appropriate Area of Concern Defendant is required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at Operable Unit 3 by the design and implementation of the Work for Operable Unit 3 by the Settling Defendants, in accordance with Schedule A of this Consent Decree, to reimburse certain response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by the Appropriate Area of Concern Defendant.

a. The Appropriate Area of Concern Defendant shall perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans,

standards, specifications, and schedules set forth herein or developed by the Appropriate Area of Concern Defendant and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, pursuant to this Consent Decree and in accordance with Schedule A. Where the Appropriate Area of Concern Defendant is defined in Paragraph 4 to mean more than one Settling Defendant with respect to a particular Area of Concern, then all such Settling Defendants shall be jointly and severally liable for such performance of the Work for that Area of Concern. Settling Defendants shall also reimburse the United States for United States Interim Response Costs and United States Future Response Costs and the Commonwealth for State Past Response Costs, State Interim Response Costs and State Future Response Costs as provided in this Consent Decree. Settling Defendants shall be jointly and severally liable for State Past Response Costs.

b. In the event of the insolvency or other failure of any one or more Appropriate Area of Concern Defendant at an Area of Concern to perform the requirements of this Consent Decree, the remaining Appropriate Area of Concern Defendant responsible for that Area of Concern in accordance with Schedule A, shall complete all such requirements upon receipt of sixty (60) days notice from EPA following a determination by EPA that the Appropriate Area of Concern Defendant performing the Work is unable to perform such Work.

c. In the event that the Appropriate Area of Concern Defendant receives a notification from EPA pursuant to paragraph 6(b), the Appropriate Area of Concern Defendant shall complete the Work required under this Consent Decree. During the 60-day period following notice from EPA that the Appropriate Area of Concern Defendant performing the Work is unable to perform the Work, EPA and the remaining Appropriate Area of Concern Defendant responsible for that Area of Concern pursuant to Schedule A shall promptly meet to establish a mutually agreeable plan and schedule for completion of the requirements under the Consent Decree. If the parties cannot reach agreement, EPA, in consultation with the Commonwealth, shall specify a plan and schedule, subject to the right of the Appropriate Area of Concern Defendant to invoke the dispute resolution provisions of Section XX of this Consent Decree regarding the plan and schedule. Such plan and schedule shall supersede any other existing plans and schedules established in this Consent Decree. The Appropriate Area of Concern Defendant who takes over the Work shall not be subject to stipulated penalties accruing as a result of the failure of the Appropriate Area of Concern Defendant having initial responsibility to meet the requirements of this Consent Decree through the end of said 60-day period, but shall be liable for any stipulated penalties that accrue thereafter in connection with its new plan and schedule for completing the Work.

d. Each Appropriate Area of Concern Defendant shall assume any and all liability arising from or relating to its acts or omissions in the performance of the Work for which it is responsible pursuant to Schedule A or its failure to perform fully or complete the requirements of this Consent Decree that apply to it.

7. Compliance With Applicable Law. The Settling Defendants shall perform all activities pursuant to this Consent Decree in accordance with the requirements of all applicable federal and state laws and regulations. The Appropriate Area of Concern Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD and the SOW (ARARs) relating to the Area(s) of Concern for which it is responsible pursuant to Schedule A. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP and the MCP.

8. Permits.

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

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

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

9. Notice to Successors-in-Title.

a. Each Settling Defendant, with respect to its Affected Property, shall, within fifteen (15) days after the entry of this Consent Decree, submit to EPA for review and approval a notice, to be filed with the Middlesex North Registry of Deeds, Commonwealth of Massachusetts, or other appropriate land records office, notifying all successors-in-title: (i) that the Affected Property is part of Operable Unit 3 at the Site; (ii) that EPA selected a remedy for Operable Unit 3 on September 30, 2004, following MassDEP's concurrence on September, 24, 2004; (iii) that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy; and (iv) that the Affected Property is subject to certain obligations to provide access and to restrict its use, pursuant to Section IX ("Access and Institutional Controls") of this Consent Decree, including the possible establishment of a grant of environmental restriction and easement ("Grant") affecting all or a portion of the Affected Property, pursuant to said Section IX, in the form of Appendix F ("Form of Grant of Environmental Restriction and Easement") of this Consent Decree. Each such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Each such Settling Defendant shall record such notice with respect to its Affected Property within 10 days of EPA's approval thereof, and shall provide EPA and MassDEP with a certified copy of each such recorded notice within 10 days of recording. Thereafter, any deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the Affected Property, or any portion thereof, shall reference the recorded location of such notice.

b. At least 30 days prior to the conveyance of any deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the Affected Property, or any portion thereof, the Settling Defendant conveying such interest shall give the grantee written notice of this Consent Decree, including the above-described requirements, and shall also give written notice to EPA and MassDEP of the proposed conveyance, including the name and address of the grantee, and the date on which said notice was given to the grantee. If the Grant and/or any other instrument establishing access or imposing restrictions on the Affected Property pursuant to this Consent Decree has been recorded at said Registry or other appropriate land records office, the Settling Defendant conveying such interest shall reference such Grant and/or other instrument in all

subsequent deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the Affected Property, or any portion thereof.

c. In the event of any such conveyance, the obligations under this Consent Decree of the Settling Defendant conveying such interest(s) in the Affected Property, including, but not limited to, the obligation to provide or secure access to the Affected Property and to establish on the Affected Property institutional controls pursuant to Section IX (Access and Institutional Controls), including satisfaction of all requirements contained therein, shall continue to be met by the Settling Defendant conveying such interest. In no event shall a conveyance of the Affected Property, or any interest therein, release or otherwise affect the liability of the Settling Defendant conveying such interest to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, after a reasonable opportunity for review and comment by the Commonwealth, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY THE APPROPRIATE AREA OF CONCERN DEFENDANT

10. Selection of Supervising Contractor.

a. As set forth in Schedule A, the Appropriate Area of Concern Defendant shall perform the Work at each Area of Concern for which it is responsible at Operable Unit 3 as described in this Consent Decree, in the Record of Decision attached as Appendix A and in the Statement of Work, attached hereto as Appendix B, which the Parties agree is consistent with the ROD. The ROD, the SOW, and all modifications to the SOW are hereby incorporated by reference and made a part of this Decree.

b. The Appropriate Area of Concern Defendant shall perform all aspects of the Work pursuant to this Section VI and Sections VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree under the direction and supervision of qualified contractor(s), the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the Commonwealth. Within ten (10) days after the lodging of this Consent Decree, or within such other period of time as approved by EPA in writing, the Appropriate Area of Concern Defendant shall notify EPA and MassDEP in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the Work in the appropriate Area of Concern as set forth in Schedule A. EPA will, within a reasonable period of time after such notice, issue a notice of disapproval or an authorization to proceed. If at any time thereafter, the Appropriate Area of Concern Defendant proposes to change a Supervising Contractor, the Appropriate Area of Concern Defendant shall give such notice to EPA and MassDEP, and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

c. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Appropriate Area of Concern Defendant in writing. The Appropriate Area of Concern Defendant shall submit to EPA and MassDEP a list of contractors, including the qualifications of each contractor, that would be acceptable to them, within forty-five (45) days of receipt of EPA's disapproval of the Supervising Contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. The Appropriate Area of Concern Defendant may select

any Supervising Contractor from that list that is not disapproved and shall notify EPA and MassDEP of the name of the Supervising Contractor selected within twenty-one (21) days of EPA's authorization to proceed.

d. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Appropriate Area of Concern Defendant from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, the Appropriate Area of Concern Defendant may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design.

a. Within twenty-one (21) days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, the Appropriate Area of Concern Defendant shall submit to EPA and MassDEP a Design Schedule, as required by Section V.A.1 of the SOW attached as Appendix B hereto, for EPA review and approval or modification or disapproval. The Appropriate Area of Concern Defendant shall submit a work plan for the design of the Remedial Action ("Remedial Design Work Plan" or "RD Work Plan") in accordance with the approved Design Schedule. The Remedial Design Work Plan for each Area of Concern shall provide for design of the remedy set forth in the ROD for that particular Area of Concern, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Pursuant to Section V.A.2 of the SOW, the Appropriate Area of Concern Defendant may submit a proposed design alternative which satisfies the criteria set forth in Section V.A.2 of the SOW. Upon EPA's approval of each such Design Schedule, Remedial Design Work Plan and all other plans, submittals and deliverables under Section V of the SOW for a particular AOC, such documents shall be incorporated into and become enforceable under this Consent Decree, relative to each such AOC and the Appropriate Area of Concern Defendant. The Appropriate Area of Concern Defendant shall submit a Health and Safety Plan for field design activities, which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Appropriate Area of Concern Defendant shall submit to EPA all other Remedial Design plans, submittals and deliverables described in the SOW, in accordance with the approved Design Schedule.

b. Upon approval of a Remedial Design Work Plan by EPA for any particular Area of Concern, after a reasonable opportunity for review and comment by the Commonwealth, and submittal of the Health and Safety Plan for all field activities to EPA and MassDEP, the Appropriate Area of Concern Defendant shall implement the Remedial Design Work Plan. The Appropriate Area of Concern Defendant shall submit to EPA and MassDEP all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, the Appropriate Area of Concern Defendant shall not commence further Remedial Design activities at an AOC at Operable Unit 3 prior to approval of the Remedial Design Work Plan for such AOC. Upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, of the other Remedial Design deliverables required under the SOW, the Appropriate Area of Concern Defendant shall implement the activities required by such deliverables.

12. Remedial Action.

a. Within thirty (30) days after the approval of the final design submittal for a particular AOC, the Appropriate Area of Concern Defendant shall submit to EPA and MassDEP

a work plan for the performance of the Remedial Action at the Area of Concern for which it is responsible in accordance with Schedule A ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth. Upon EPA's approval of each such Remedial Action Work Plan, and all other plans, submittals and deliverables under Section VI of the SOW for a particular AOC, all such documents shall be incorporated into and become enforceable under this Consent Decree relative to each such AOC and the Appropriate Area of Concern Defendant. Within 30 days after the approval of the final design submittal for a particular AOC, the Appropriate Area of Concern Defendant shall submit a Health and Safety Plan for remedial activities, which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Appropriate Area of Concern Defendant shall submit to EPA for approval all other Remedial Action plans, submittals and deliverables described in the SOW in accordance with the schedule set forth in the SOW and the approved Remedial Action Work Plan.

b. Upon approval by EPA of the Remedial Action Work Plan for a particular AOC, after a reasonable opportunity for review and comment by the Commonwealth, the Appropriate Area of Concern Defendant shall implement the activities required under the Remedial Action Work Plan. The Appropriate Area of Concern Defendant shall submit to EPA and MassDEP all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, the Appropriate Area of Concern Defendant shall not commence physical Remedial Action activities at an AOC prior to approval of the Remedial Action Work Plan for that AOC. Upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, of the other Remedial Action deliverables required under the SOW, the Appropriate Area of Concern Defendant shall implement the activities required by such deliverables.

13. The Appropriate Area of Concern Defendant shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary or appropriate to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 14, the "scope of the remedy selected in the ROD" is defined as the remedial actions required for each of the Areas of Concern, as described in Section L of the ROD, or any amendments or modifications thereto.

c. If the Appropriate Area of Concern Defendant objects to any modification determined by EPA to be necessary or appropriate for an Area of Concern pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XX (Dispute Resolution), Paragraph 75 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. The Appropriate Area of Concern Defendant shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

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

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. The Appropriate Area of Concern Defendant shall, prior to any off-site shipment of Waste Material from an Area of Concern to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Appropriate Area of Concern Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Appropriate Area of Concern Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Appropriate Area of Concern Defendant following the award of the contract for Remedial Action construction. The Appropriate Area of Concern Defendant shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

VII. REMEDY REVIEW

17. Periodic Review. The Appropriate Area of Concern Defendant shall conduct any studies and investigations as requested by EPA, after a reasonable opportunity for review and comment by the Commonwealth, in order to permit EPA to conduct reviews of whether the

Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action is not protective of human health and the environment, EPA may select further response action(s) for the Site, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the requirements of CERCLA and the NCP.

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

20. Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, after a reasonable opportunity for review and comment by the Commonwealth, the Appropriate Area of Concern Defendant shall undertake such further response actions to the extent that the reopener conditions in Paragraph 92 or Paragraph 93 (United States' reservations of liability based on unknown conditions or new information) are satisfied. To the extent that the reopener conditions in Paragraph 92 or Paragraph 93 are satisfied, and the unknown conditions or new information which satisfy such reopener conditions result in EPA, after a reasonable opportunity for State review and comment, determining that an additional Settling Defendant, who was not previously identified as responsible for that Area of Concern pursuant to Schedule A, is responsible for such Area of Concern, then Settling Defendants agree that Schedule A shall be modified accordingly, and the Appropriate Area of Concern Defendant shall be bound by all provisions of this Consent Decree. The Appropriate Area of Concern Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute: (1) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the reopener conditions of Paragraph 92 or Paragraph 93 of Section XXII (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action is not protective of human health and the environment, (3) EPA's selection, after a reasonable opportunity for review and comment by the Commonwealth, of the further response actions, or (4) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the reopener conditions of Paragraph 92 or 93 have changed the identification of the Appropriate Area of Concern Defendant for one or more Areas of Concern. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 75 (record review).

21. Submissions of Plans. If the Appropriate Area of Concern Defendant is required to perform the further response actions pursuant to Paragraph 20, it shall submit a plan for such work to EPA and MassDEP for approval in accordance with the procedures set forth in Section VI (Performance of the Work by the Appropriate Area of Concern Defendant) and shall implement the plan approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. The Appropriate Area of Concern Defendant shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements

for Quality Assurance Project Plans (QA/R5)"(EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)"(EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to each such Appropriate Area of Concern Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, the Appropriate Area of Concern Defendant shall submit to EPA for EPA approval, after a reasonable opportunity for review and comment by the Commonwealth, a Sampling Analysis Plan ("SAP"), which consists of a Quality Assurance Project Plan ("QAPP") and Field Sampling Plan ("FSP"), that are consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall be admissible as evidence, without objection, in any proceeding under this Decree. The Appropriate Area of Concern Defendant shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by such Appropriate Area of Concern Defendant in implementing this Consent Decree. In addition, the Appropriate Area of Concern Defendant shall contractually require that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Appropriate Area of Concern Defendant shall contractually require that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, the Appropriate Area of Concern Defendant may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. The Appropriate Area of Concern Defendant shall contractually require that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Appropriate Area of Concern Defendant shall only contract with laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA, after a reasonable opportunity for review and comment by the Commonwealth. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. The Appropriate Area of Concern Defendant shall contractually require that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Appropriate Area of Concern Defendant shall allow split or duplicate samples to be taken by EPA and MassDEP or their authorized representatives. Each Appropriate Area of Concern Defendant shall notify EPA and MassDEP not less than three (3) weeks in advance of any sample collection activity unless shorter notice is agreed to by EPA and MassDEP. In addition, EPA and MassDEP, respectively, shall each have the right to take any additional samples that either EPA or MassDEP deem necessary and shall provide the Appropriate Area of Concern Defendant with copies of all sampling data. Upon request, EPA and MassDEP shall allow the Appropriate Area of Concern Defendant to take split or duplicate

samples of any samples they take as part of the Plaintiffs' oversight of such Area of Concern Defendant's implementation of the Work.

24. The Appropriate Area of Concern Defendant shall submit two (2) copies to EPA and two (2) copies to MassDEP of the results of all sampling and/or tests or other data obtained or generated by or on behalf of such Appropriate Area of Concern Defendant with respect to the implementation of this Consent Decree, unless EPA and the Commonwealth agree otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Chapter 21C, Chapter 21E and any other applicable Federal or State statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. Each Settling Defendant, with respect to its Affected Property, and any other property that it owns or controls where access and/or land/water use restrictions are needed to implement this Consent Decree, shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth, and their representatives, including EPA, MassDEP and their respective contractors, with access at all reasonable times to the Affected Property, or such other property, taking into consideration that a portion of Area of Concern 5 (Contaminated Soils Area) is an active railroad yard, and as such, access to such portion should address safety, notice, and applicable railroad or safety laws, provided that the cost of compliance with any such safety, notice and applicable railroad or safety laws shall be the sole responsibility of the Appropriate Area of Concern Defendant, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work at Operable Unit 3;
- (2) Verifying any data or information submitted to the United States and/or the Commonwealth;
- (3) Conducting investigations relating to contamination at or near Operable Unit 3;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near Operable Unit 3;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work at Operable Unit 3 pursuant to the conditions set forth in Paragraph 100 of this Consent Decree;
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV (Access to Information);
- (9) Assessing Settling Defendants' compliance with this Consent Decree; and
- (10) Determining whether the Affected Property or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using its Affected Property, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree;

c. execute and record, to the extent required under the approved Institutional Control Plan under the SOW, in the Middlesex North Registry of Deeds or Land Registration Office, as applicable, Commonwealth of Massachusetts, a Grant, the form of which is attached as Appendix F of this Consent Decree, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, or (ii) other appropriate grantees as determined by EPA. Such grant shall be fully assignable, in whole or in part. The Commonwealth, in entering into this Consent Decree, does not agree, either on its behalf or on behalf of MassDEP, and this Consent Decree shall not constitute the Commonwealth's or MassDEP's agreement, to accept such Grant as is described in this subparagraph 26.c or an assignment of any such Grant. No grant or assignment of the grant to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Massachusetts General Laws, c. 21E, Section 6, as amended. Notwithstanding any other provision of this Consent Decree, MassDEP fully reserves all rights to condition its acceptance of any grant or assignment of any grant upon full and complete satisfaction by the grantor or assignor of any requirements for implementing such grant or such assignment, respectively, that MassDEP, in its sole discretion, may deem appropriate. MassDEP shall identify such requirements upon request or at such other time as MassDEP deems appropriate. Any disputes that may arise related to MassDEP's requirements or a determination not to accept a grant are outside the scope of and do not arise under this Consent Decree. Such Settling Defendant shall, within 45 days after notice from EPA, submit to EPA and MassDEP for review and approval with respect to such property:

(1) a fully executed Grant, in substantially the form of Appendix F hereto, that is enforceable under the laws of the Commonwealth of Massachusetts, free and clear of all prior liens and encumbrances (except as approved by EPA and MassDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255;

(2) a current title commitment or Certification of Title prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"); and

(3) any other documents, including but not limited to a Subordination Agreement for any prior liens and encumbrances, and a survey plan, if required by EPA pursuant to CERCLA and/or MassDEP pursuant to M. G. L. c. 21E.

d. Within fifteen (15) days of EPA and MassDEP's approval of the Grant, title commitment or Certification of Title, and other required documents, such Settling Defendant shall update the title commitment or Certification of Title and, if any additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, the Grant shall not be recorded but the Settling Defendant shall immediately notify EPA and MassDEP and provide a copy of each such encumbrance. If no additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, or upon receipt from EPA and MassDEP of written approval to proceed, the Settling Defendant shall record and/or register

the Grant, the Subordination Agreement, if any, and the survey plan with the Middlesex North Registry of Deeds or Land Registration Office, as applicable.

e. Within thirty (30) days of recording and/or registering the Grant, the Subordination Agreement, if any, and the survey plan, the Settling Defendant shall submit to EPA and MassDEP:

- (1) a certified Registry copy of the Grant bearing the book and page/instrument number and/or document number;
- (2) a Registry copy of the required survey plan(s) referenced in the Grant, bearing the plan book/plan number; and
- (3) if the property subject to the Grant is unregistered land, a Registry copy of the deed into the owner of the property, bearing the marginal reference required by 310 CMR 40.1071(3)(a).

27. If any property where access and/or land/water use restrictions are needed to implement this Consent Decree is owned or controlled by persons other than any of the Settling Defendants, upon request by EPA, the Appropriate Area of Concern Defendant shall use best efforts to secure from such persons:

- a. an agreement to provide access thereto for such Area of Concern Defendant, as well as for the United States on behalf of EPA, and the Commonwealth on behalf of MassDEP, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree;
- b. an agreement, enforceable by the Appropriate Area of Concern Defendant, the United States and MassDEP, to abide by the obligations and restrictions necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and
- c. to the extent required under the approved Institutional Control Plan under the SOW, the execution and recordation in the Middlesex North Registry of Deeds or Land Registration Office, as applicable, Commonwealth of Massachusetts, of a Grant, the form of which is attached as Appendix F of this Consent Decree, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, or (ii) other appropriate grantees as determined by EPA. Such grant shall be fully assignable, in whole or in part. The Commonwealth, in entering into this Consent Decree, does not agree, either on its behalf or on behalf of MassDEP, and this Consent Decree shall not constitute the Commonwealth's or MassDEP's agreement, to accept such Grant as is described in this subparagraph 27.c or an assignment of any such Grant. No grant or assignment of the grant to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Massachusetts General Laws, c. 21E, Section 6, as amended. Notwithstanding any other provision of this Consent Decree, MassDEP fully reserves all rights to condition its acceptance of any grant or assignment of any grant upon full and complete satisfaction by the grantor or assignor of any requirements for implementing such grant or such assignment, respectively, that MassDEP, in its sole discretion, may deem appropriate. MassDEP shall identify such requirements upon request or at such other time as

MassDEP deems appropriate. Any disputes that may arise related to MassDEP's requirements or a determination not to accept a grant are outside the scope of and do not arise under this Consent Decree. Such Area of Concern Defendant shall, within forty-five (45) days after request by EPA, submit to EPA and MassDEP for review and approval with respect to such property:

(1) a fully executed Grant, in substantially the form of Appendix F hereto, that is enforceable under the laws of the Commonwealth of Massachusetts, free and clear of all prior liens and encumbrances (except as approved by EPA and MassDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255;

(2) a current title commitment or Certification of Title prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"); and

(3) any other documents, including but not limited to a Subordination Agreement for any prior liens and encumbrances, and a survey plan, if required by EPA pursuant to CERCLA and/or MassDEP pursuant to M. G. L. c. 21E.

d. Within fifteen (15) days of EPA and MassDEP's approval of the Grant, title commitment or Certification of Title, and other required documents, the Appropriate Area of Concern Defendant shall update the title commitment or Certification of Title and, if any additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, the Grant shall not be recorded but the Appropriate Area of Concern Defendant shall immediately notify EPA and MassDEP and provide a copy of each such encumbrance. If no additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, or upon receipt from EPA and MassDEP of written approval to proceed, the Appropriate Area of Concern Defendant shall record and/or register the Grant, the Subordination Agreement, if any, and the survey plan with the Middlesex North Registry of Deeds or Land Registration Office, as applicable.

e. Within thirty (30) days of recording and/or registering the Grant, the Subordination Agreement, if any, and the survey plan, the Appropriate Area of Concern Defendant shall submit to EPA and MassDEP:

(1) a certified Registry copy of the Grant bearing the book and page/instrument number and/or document number;

(2) a Registry copy of the required survey plan(s) referenced in the Grant, bearing the plan book/plan number; and

(3) if the property subject to the Grant is unregistered land, a Registry copy of the deed into the owner of the property, bearing the marginal reference required by 310 CMR 40.1071(3)(a).

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land use restrictions, and/or the Grant and any other restrictive easements, provided that in no event shall any Settling Defendant be obligated to pay any such sums of money to Cooperative Reserve Supply, Inc., or any related entity, with respect to AOC 4, or Eastern Terminals, Inc., or any related entity, with respect to AOC 5. If any access agreements or the land use restriction agreements required by Paragraphs 27.a or 27.b of this Consent Decree are not obtained within forty-five (45) days of the date of EPA's request, or a Grant or any other access easements or restrictive easements required by Paragraph 27.c of this Consent Decree are not submitted to EPA in final form within forty-five (45) days of EPA's request, the Appropriate Area of Concern Defendant shall promptly notify the United States and MassDEP in writing, and shall include in

that notification a summary of the steps that such Area of Concern Defendant has taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States or the Commonwealth may, as either deems appropriate, assist the Appropriate Area of Concern Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of a Grant or other easements running with the land. The Appropriate Area of Concern Defendant shall reimburse the United States and/or the Commonwealth, as appropriate, in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States or the Commonwealth in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation, provided that no reimbursement for any such monetary consideration or just compensation paid to either Cooperative Reserve Supply, Inc. or Eastern Terminals, Inc., or any related entity, shall be paid to the United States or the Commonwealth with respect to any actions undertaken by either to obtain access and/or land/water use restrictions with respect to AOC 4 or AOC 5.

29. If EPA determines that land use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Appropriate Area of Concern Defendant shall cooperate with EPA's and the Commonwealth's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, as well as all of their rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable Federal or State statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, the Appropriate Area of Concern Defendant shall submit two (2) copies to EPA and two (2) copies to MassDEP of written monthly progress reports and one electronic copy of the monthly report to EPA and MassDEP as required in Sections V.A.3 and VI.E of the SOW attached as Appendix B. The Appropriate Area of Concern Defendant shall submit these progress reports to EPA and MassDEP by the tenth day of every month as required by the SOW, until EPA notifies such Appropriate Area of Concern Defendant pursuant to Paragraph 53.b of Section XIV (Certification of Completion). If requested by EPA or the Commonwealth, the Appropriate Area of Concern Defendant shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work every month, or as the Parties may otherwise agree is a reasonable briefing schedule.

32. The Appropriate Area of Concern Defendant shall notify EPA and MassDEP of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than fourteen (14) days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that the Appropriate Area of Concern Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), the Appropriate Area of Concern Defendant shall within 24 hours of when such Appropriate Area of Concern Defendant becomes aware of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 1-New England, United States Environmental Protection Agency. The Appropriate Area of Concern Defendant

shall orally notify the MassDEP Project Manager within 24 hours of the onset of any event for which notification to the EPA Project Coordinator is required as stated above. The Appropriate Area of Concern Defendant shall orally notify the MassDEP Project Manager and the EPA Project Coordinator concurrently with any report of any release or threat of a release that meets the criteria set forth in 310 CMR 40.0300 (in addition to notifying the MassDEP Northeast Regional Office of Emergency Response Section in accordance with the requirements of the MCP). These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within twenty (20) days of the onset of such an event, the Appropriate Area of Concern Defendant shall furnish to Plaintiffs a written report, signed by such Appropriate Area of Concern Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within forty-five (45) days of the conclusion of such an event, such Appropriate Area of Concern Defendant shall submit a report setting forth all actions taken in response thereto.

35. The Appropriate Area of Concern Defendant shall submit two (2) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other required submittals to EPA in accordance with the schedules set forth in such plans relating to the Area of Concern for which it is responsible under Schedule A. The Appropriate Area of Concern Defendant shall simultaneously submit two (2) copies of all such plans, reports and data to MassDEP, along with an electronic copy of each such submittal, if an electronic copy is available.

36. All reports and other documents submitted by the Appropriate Area of Concern Defendant to EPA and/or MassDEP (other than the monthly progress reports referred to above) which purport to document such Appropriate Area of Concern Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of such Appropriate Area of Concern Defendant.

37. All plans, reports, and other items required to be submitted to EPA and/or MassDEP under this Consent Decree may be submitted electronically, if mutually agreed to in advance by EPA, the Commonwealth and the Appropriate Area of Concern Defendant.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission; or (e) any combination of the above.

39. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 38(a), (b), or (c), the Appropriate Area of Concern Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA.

40. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d), the Appropriate Area of Concern Defendant shall, within twenty-one (21) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section

XXI, shall accrue during the twenty-one (21) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved as provided in Paragraphs 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d), the Appropriate Area of Concern Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission, provided such action is not dependent on the disapproved portion and can otherwise be performed given such disapproval. Implementation of any non-deficient portion of a submission shall not relieve such Appropriate Area of Concern Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Appropriate Area of Concern Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The Appropriate Area of Concern Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its/their right to invoke the procedures set forth in Section XX (Dispute Resolution).

42. If upon resubmission, a plan, report, or item is disapproved by EPA, the Appropriate Area of Concern Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless such Appropriate Area of Concern Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

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

XII. PROJECT COORDINATORS

44. Within twenty-one (21) days of lodging this Consent Decree, each Appropriate Area of Concern Defendant, EPA and MassDEP will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least seven (7) calendar days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Each Appropriate Area of Concern Defendant's Project Coordinator shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. No Appropriate Area of Concern Defendant's Project Coordinator shall be an attorney for the Appropriate Area of Concern Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during remedial activities. Each Appropriate Area of Concern Defendant may designate its Supervising Contractor as its Project Coordinator.

45. Plaintiffs may designate other representatives, including, but not limited to, EPA and Commonwealth employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work at OU3 required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

46. EPA's Project Coordinator and each Appropriate Area of Concern Defendant's Project Coordinator will meet, in person or by telephone, at a minimum, on a monthly basis or as more specifically provided for in the SOW unless EPA and such Project Coordinator otherwise agree. Each Appropriate Area of Concern Defendant's Project Coordinator shall provide MassDEP's Project Coordinator with reasonable advance notice of all such meetings. MassDEP's Project Coordinator shall have the right to fully participate in all such meetings.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

47. Within thirty (30) days of entry of this Consent Decree, each Appropriate Area of Concern Defendant shall establish and maintain financial security as provided in this Section, in an amount necessary to perform the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A. The amount of financial assurance for each Area of Concern Defendant shall be as set forth in Appendix H. Each Area of Concern Defendant shall establish and maintain financial security in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A;
- b. One or more irrevocable letters of credit equalling the total estimated cost of the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A;
- c. A trust fund in the amount of the total estimated cost of the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A;
- d. A guarantee to perform the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with such Appropriate Area of Concern Defendant;
- e. A demonstration that the Appropriate Area of Concern Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f); or
- f. Such other form of financial assurance as EPA, in its sole discretion, may approve in writing.

48. If an Appropriate Area of Concern Defendant seeks to demonstrate the ability to complete the Work for which the Appropriate Area of Concern Defendant has responsibility

pursuant to Schedule A, through a guarantee by a third party pursuant to Paragraph 47.d of this Consent Decree, such Appropriate Area of Concern Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If an Appropriate Area of Concern Defendant seeks to demonstrate its ability to complete the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A, by means of the financial test or the corporate guarantee pursuant to Paragraph 47.d or 47.e, such Appropriate Area of Concern Defendant shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date.

49. In the event that EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines at any time that the financial assurances provided pursuant to this Section are inadequate, the Appropriate Area of Concern Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 47 of this Consent Decree. An Appropriate Area of Concern Defendant's inability to demonstrate financial ability to complete the Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A shall not excuse performance of any activities required under this Consent Decree.

50. If an Appropriate Area of Concern Defendant can show that the estimated cost to complete the remaining Work for which the Appropriate Area of Concern Defendant has responsibility pursuant to Schedule A has diminished below the amount set forth in Appendix H after entry of this Consent Decree, such Appropriate Area of Concern Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Such Appropriate Area of Concern Defendant shall submit a proposal for such reduction to EPA and MassDEP, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth. In the event of a dispute, an Appropriate Area of Concern Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute. If an Appropriate Area of Concern Defendant receives written notice from EPA that the Work for which it is responsible pursuant to Schedule A has been fully and finally completed in accordance with Paragraph 53 of this Consent Decree, or if EPA otherwise so notifies such Appropriate Area of Concern Defendant in writing, after a reasonable opportunity for review and comment by the Commonwealth, such Appropriate Area of Concern Defendant may thereafter release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. The Appropriate Area of Concern Defendant shall not release, cancel, or discontinue any financial assurance(s) provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, such Appropriate Area of Concern Defendant may release, cancel, or discontinue the financial assurance(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

51. An Appropriate Area of Concern Defendant may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, an Appropriate Area of Concern Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Remedial Action.

a. Within ninety (90) days after an Appropriate Area of Concern Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained at any particular Area of Concern for which it is responsible pursuant to Schedule A, such Appropriate Area of Concern Defendant shall so notify the United States, and MassDEP, and shall schedule and conduct a pre-certification inspection to be attended by such Appropriate Area of Concern Defendant, EPA, and MassDEP. If, after the pre-certification inspection, the Appropriate Area of Concern Defendant still believes that the Remedial Action at the particular Area of Concern subject to the pre-certification inspection has been fully performed and the Performance Standards have been attained at the Area of Concern for which it is responsible pursuant to Schedule A, it shall submit a written report requesting certification to EPA for approval, with a copy to MassDEP, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Appropriate Area of Concern Defendant's Project Coordinator shall state that the Remedial Action for the particular Area of Concern for which the Appropriate Area of Concern Defendant is seeking certification has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer registered in the Commonwealth. The report shall contain the following statement, signed by a responsible corporate official of the Appropriate Area of Concern Defendant or the Appropriate Area of Concern Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines that the Remedial Action at the appropriate Area of Concern or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved at the appropriate Area of Concern, EPA will notify such Appropriate Area of Concern Defendant in writing, with a copy to MassDEP, of the activities that must be undertaken by such Appropriate Area of Concern Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards at the appropriate Area of Concern, provided, however, that EPA may only require the Appropriate Area of Concern Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Appropriate Area of Concern Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Appropriate Area of Concern Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion at any Area of Concern and after a reasonable opportunity for review

and comment by the Commonwealth, that the Remedial Action at a specific Area of Concern has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to the Appropriate Area of Concern Defendant, with a copy to MassDEP. This certification shall constitute the Certification of Completion of the Remedial Action for that Area of Concern for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action for an Area of Concern shall not affect Settling Defendants' other obligations under this Consent Decree.

53. Completion of the Work.

a. Within ninety (90) days after the Appropriate Area of Concern Defendant concludes that all phases of the Work (including O & M), have been fully performed at the Area of Concern for which it is responsible pursuant to Schedule A, the Appropriate Area of Concern Defendant shall schedule and conduct a pre-certification inspection to be attended by such Appropriate Area of Concern Defendant, EPA and the Commonwealth at that specific Area of Concern. If, after the pre-certification inspection, the Appropriate Area of Concern Defendant still believes that the Work has been fully performed at that AOC, the Appropriate Area of Concern Defendant shall submit a written report by a professional engineer registered in the Commonwealth, stating that the Work at the specific AOC has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of the Appropriate Area of Concern Defendant or the Appropriate Area of Concern Defendant's Project Coordinator:

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

If, after review of the written report, EPA determines, after a reasonable opportunity for review and comment by the Commonwealth, that any portion of the Work at the appropriate Area of Concern has not been completed in accordance with this Consent Decree, EPA, after a reasonable opportunity for review and comment by the Commonwealth, will notify the Appropriate Area of Concern Defendant in writing of the activities that must be undertaken by such Appropriate Area of Concern Defendant pursuant to this Consent Decree to complete the Work at the specific AOC. Provided, however, that EPA may only require the Appropriate Area of Concern Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Appropriate Area of Concern Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Appropriate Area of Concern Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by the Appropriate Area of Concern Defendant and after a reasonable opportunity for review and comment by the Commonwealth, that the Work at a specific Area of

Concern has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in accordance with Section XXVII of this Consent Decree.

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work at an Area of Concern which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Appropriate Area of Concern Defendant shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Appropriate Area of Concern Defendant shall notify the EPA Emergency Response Unit, Region 1-New England. In such an event, the Appropriate Area of Concern Defendant shall also immediately notify MassDEP's Project Coordinator, or if the MassDEP's Project Coordinator is unavailable, MassDEP's Alternate Project Coordinator, and the MassDEP Northeast Regional Office of the Emergency Response Section. Such notification is in addition to any other notification requirements under M. G. L. c. 21E and the MCP. The Appropriate Area of Concern Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the contingency plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Appropriate Area of Concern Defendant fails to take appropriate response action as required by this Section, and EPA, or as appropriate, the Commonwealth takes such action instead, the Appropriate Area of Concern Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP, and shall reimburse the Commonwealth all costs of the response action not inconsistent with the NCP or the MCP, pursuant to Section XVI (Payments for Response Costs).

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

XVI. PAYMENTS FOR RESPONSE COSTS

56. Payments for Past Response Costs. Within thirty (30) days of the Effective Date, Settling Defendants shall pay to the Commonwealth in reimbursement of the State Past Response Costs \$34,000 in the form of a certified or cashier's check or checks made payable to the "Commonwealth of Massachusetts" and referencing Iron Horse Park Superfund Site OU3. Settling Defendants shall deliver such certified or cashier's check(s) to the attention of Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, MA 02108. Settling Defendants shall also send copies of such check(s) and transmittal letter to Mark Collins, Branch Chief, Cost Recovery, Fees and Revenue Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108, and to the Commonwealth as specified in Section XXVII (Notices and Submissions).

57. Payments for Future Response Costs.

a. Settling Defendants, in accordance with subparagraph 57.e, shall pay to

EPA all United States Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, which shall be annually to the extent practicable, the United States will send the Settling Defendants a bill requiring payment that includes an itemized cost summary. The Settling Defendants shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 58. Settling Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 0157, and DOJ Case Number 90-11-3-90/2. Settling Defendants shall send the check(s) to:

EPA Region 1, Attn: Superfund Accounting
P.O. Box 360197M, Pittsburgh, PA 15251

In the alternative, Settling Defendants may make the payments required by this Paragraph through a wire transfer. Wire transfers shall reference the name and address of the party making the payment, EPA Site/Spill ID Number 0157, and DOJ Case Number 90-11-3-90/2, and shall be directed to:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions). Settling Defendants shall also send notice that payment has been made to: EPA Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 57(a) shall be deposited in the Iron Horse Park 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.

d. Settling Defendants, in accordance with subparagraph 57.e, shall pay to the Commonwealth all State Future Response Costs not inconsistent with the NCP or MCP. On a periodic basis, which shall be annually to the extent practicable, the Commonwealth will send to the Settling Defendants a bill requiring payment of such State Future Response Costs, which includes an itemized cost summary. The Settling Defendants shall make all payments within thirty (30) days of the Settling Defendant's receipt of each bill for State Future Response Costs, except as otherwise provided in Paragraph 58. The Settling Defendants shall make all payments to the Commonwealth required by this Paragraph in the manner described in Paragraph 56.

e. (i) Subject to the exception noted in subparagraph (iv) below, BNZ shall pay 12.5 percent of all United States Future Response Costs and State Future Response Costs (collectively referred to herein as "Government Costs") up to a cap of Two Hundred Eighty-Five Thousand (\$285,000) Dollars. B&M shall pay for the balance of all Government Costs.

MBTA shall have no obligation to pay Government Costs.

(ii) With respect to each bill that EPA or the Commonwealth issue to the Settling Defendants for Government Costs, BNZ shall pay 12.5 percent of each such bill (regardless of whether or not such costs have been segregated among Areas of Concern), and B&M shall pay 87.5 percent of each such bill until the amount paid by BNZ for Government Costs, in the aggregate, equals \$285,000. After BNZ's aggregate payment of Government Costs equals \$285,000, B&M shall pay all Government Costs, and BNZ shall have no further obligation to pay Government Costs.

(iii) Each Settling Defendant shall pay solely the share of Government Costs allocated to it by the provisions of this paragraph.

(iv) Each Settling Defendant shall pay 100 percent of the Government Costs associated with its own noncompliance or alleged noncompliance with this Consent Decree. Nothing in this Paragraph is or shall be construed to waive any right or defenses of any such Settling Defendant to a claim of noncompliance.

58. Settling Defendants may contest payment of any United States Future Response Costs or State Future Response Costs under Paragraph 57 if and only if they determine that the United States or the Commonwealth has made an accounting error, or if they allege that a cost item that is included represents costs that are inconsistent with the NCP or, in the case of the Commonwealth, inconsistent with both the NCP and the MCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the Commonwealth (if the Commonwealth's accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States or the Commonwealth in the manner described in Paragraph 57. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Massachusetts and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States and the Commonwealth, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States or the Commonwealth prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States or to the Commonwealth, if the Commonwealth's costs are disputed, in the manner described in Paragraph 57. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or to the Commonwealth, if the Commonwealth's costs are disputed, in the manner described in Paragraph 57; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation

to reimburse the United States and the Commonwealth for the United States Future Response Costs and State Future Response Costs.

59. In the event that the payments required by Paragraph 56 are not made within 30 days of the Effective Date or the payments required by Paragraph 57 are not made within 30 days of Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on State Past Response Costs owed to the Commonwealth under this Paragraph shall begin to accrue 30 days after the Effective Date. The Interest on United States Future Response Costs and State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 57.

XVII. MIXED FUNDING

60. Pursuant to Section 122(b)(1) of CERCLA, 42 U.S.C. § 9622(b)(1), this Section, and Appendix G to this Consent Decree, EPA will reimburse the Settling Defendants for certain costs they have actually incurred and paid in performing the Work at OU3, which shall include design, construction and other implementation of Work at OU3. In accordance with Appendix G of this Consent Decree, the Settling Defendants may submit a claim for reimbursement from the Hazardous Substance Superfund (the Superfund) for actual costs they have incurred in performing the Work at OU3 in accordance with this Consent Decree and Appendix G (Preauthorization Decision Document). In no event shall Settling Defendants' total claim(s) against the Fund under this section exceed the sum of \$2,500,000. Reimbursement from the Fund shall be subject to the applicable claims and audits procedures set forth in 40 CFR Part 307 and as specified in Appendix G.

61. If EPA denies a claim for reimbursement in whole or in part, it shall notify the Settling Defendants in writing of the reason for such denial. Within thirty (30) days after receiving notice of EPA's decision, the Settling Defendants may request an administrative hearing as provided in section 112(b)(2) of CERCLA, 42 U.S.C. § 9612(b)(2).

62. Payment of any claim under this Section shall be subject to Settling Defendants' subrogation of their rights to the United States to recover from other parties any costs reimbursed to the Settling Defendants under this Section.

63. Settling Defendants and Settling Defendants' contractors shall assist in any cost recovery action which may be initiated by the United States by: furnishing the personnel, documents, and materials requested by the United States to assist the United States in documenting the work performed and costs expended by Settling Defendants or Settling Defendants' contractors at the Site; providing all requested assistance in the interpretation of such evidence and costs; and providing requested testimony. All of the Settling Defendants' contracts which implement the Preauthorization Decision Document shall include a specific requirement that the contractors agree to provide this cost recovery assistance to the United States. Settling Defendants or their contractors shall not, however, be obligated to furnish any testimony, affidavits, declarations, documents or other materials that are protected from disclosure by the attorney-client privilege, work-product doctrine, or any other privilege or doctrine recognized by federal law.

64. The Settling Defendants shall not make any claim against the Superfund for costs associated with the Work at OU3 required under this Consent Decree, except as provided by this Section.

XVIII. INDEMNIFICATION AND INSURANCE

65. Settling Defendants' Indemnification of the United States and the Commonwealth

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

b. The United States and the Commonwealth shall give the Appropriate Area of Concern Defendant notice of any claim for which the United States or the Commonwealth plans to seek indemnification pursuant to Paragraph 65, and shall consult with said Appropriate Area of Concern Defendant prior to settling such claim.

66. The Appropriate Area of Concern Defendant waives all claims against the United States and the Commonwealth for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Commonwealth, arising from or on account of any contract, agreement, or arrangement between any one or more Appropriate Area of Concern Defendant and any person for performance of Work on or relating to Operable Unit 3, including, but not limited to, claims on account of construction delays. In addition, the Appropriate Area of Concern Defendant shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between such Appropriate Area of Concern Defendant and any person for performance of Work on or relating to Operable Unit 3, including, but not limited to, claims on account of construction delays.

67. No later than thirty (30) days before commencing any on-site Work, the Appropriate Area of Concern Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Work pursuant to Subparagraph 53.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of

three million dollars, combined single limit and automobile liability insurance with limits of three million dollars, combined single limit, naming the United States and the Commonwealth as additional insureds. In addition, for the duration of this Consent Decree, the Appropriate Area of Concern Defendant shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of said Appropriate Area of Concern Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the Appropriate Area of Concern Defendant shall provide to EPA and MassDEP certificates of such insurance and on request a copy of each insurance policy. The Appropriate Area of Concern Defendant shall resubmit such certificates and on request copies of policies each year on the anniversary of the Effective Date. If the Appropriate Area of Concern Defendant demonstrates by evidence satisfactory to EPA and MassDEP that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Appropriate Area of Concern Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

68. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Appropriate Area of Concern Defendant, of any entity controlled by said Appropriate Area of Concern Defendant, or of the Appropriate Area of Concern Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Appropriate Area of Concern Defendant's best efforts to fulfill the obligation. The requirement that the Appropriate Area of Concern Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

69. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Appropriate Area of Concern Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, within 24 hours of when said Appropriate Area of Concern Defendant first knew that the event might cause a delay. For any event for which notification to the EPA Project Coordinator is required, as stated above, the Appropriate Area of Concern Defendant shall also orally notify the MassDEP Project Manager within 24 hours of when such Defendant first knew that such event might cause a delay. Within seven days thereafter, the Appropriate Area of Concern Defendant shall provide in writing to EPA and MassDEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Appropriate Area of Concern Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Appropriate Area of Concern Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Appropriate Area of Concern Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements

shall preclude the Appropriate Area of Concern Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Appropriate Area of Concern Defendant shall be deemed to know of any circumstance of which such Appropriate Area of Concern Defendant, any entity controlled by the Appropriate Area of Concern Defendant, or such Appropriate Area of Concern Defendant's contractors knew or should have known.

70. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Appropriate Area of Concern Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify the Appropriate Area of Concern Defendant in writing, with a copy to MassDEP, of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

71. If the Appropriate Area of Concern Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Appropriate Area of Concern Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that such Appropriate Area of Concern Defendant complied with the requirements of Paragraphs 68 and 69, above. If the Appropriate Area of Concern Defendant carries this burden, the delay at issue shall be deemed not to be a violation by such Appropriate Area of Concern Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

72. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants or the Commonwealth and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 74 through 77. The Commonwealth may participate in such dispute resolution proceedings to the extent specified in Paragraphs 74 through 77. Disputes exclusively between the Commonwealth and Settling Defendants are governed by this Paragraph and Paragraph 78. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

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

The parties shall concurrently provide a copy of any Notice of Dispute to the Commonwealth.

74. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, the disputing Settling Defendant(s) invoke(s) the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the disputing Settling Defendant(s). The Statement of Position shall specify the Settling Defendant(s)' position as to whether formal dispute resolution should proceed under Paragraph 75 or Paragraph 76.

b. Within twenty-one (21) days after receipt of the disputing Settling Defendant(s)' Statement of Position, EPA, after a reasonable opportunity for review and comment by the Commonwealth, will serve on the disputing Settling Defendant(s) its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The Commonwealth, after reasonable opportunity for review and comment by EPA, may also serve a Statement of Position within the twenty-one-day time limit set forth above in this Paragraph and shall provide the disputing Settling Defendant(s) with a copy of its Statement. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 75 or 76. Within fourteen (14) days after receipt of EPA's Statement of Position and within fourteen (14) days after receipt of any Statement of Position submitted by the Commonwealth, the disputing Settling Defendant(s) may submit a Reply.

c. If there is disagreement between EPA and the disputing Settling Defendant(s) as to whether dispute resolution should proceed under Paragraph 75 or 76, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the disputing Settling Defendant(s) ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 75 and 76.

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

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the disputing Settling Defendant(s), EPA, or the Commonwealth.

b. The Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, after a reasonable opportunity for review and comment by the Commonwealth, will issue a final administrative decision resolving the dispute based on the

administrative record described in Paragraph 75.a. This decision shall be binding upon the Settling Defendant(s), subject only to the right to seek judicial review pursuant to Paragraphs 75.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 75.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the disputing Settling Defendant(s) with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the disputing Settling Defendant(s)' motion.

d. In proceedings on any dispute governed by this Paragraph, the disputing Settling Defendant(s) shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 75.a.

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

a. Following receipt of the disputing Settling Defendant(s)' Statement of Position submitted pursuant to Paragraph 74, after a reasonable opportunity for review and comment by the Commonwealth, the Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's decision shall be binding on the Settling Defendant(s) unless, within 10 days of receipt of the decision, the disputing Settling Defendant(s) file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the disputing Settling Defendant(s)' motion.

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

77. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant(s) under this Consent Decree, not directly in dispute, unless EPA, after a reasonable opportunity for review and comment by the Commonwealth, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 87. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the disputing Settling Defendant(s) do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

78. Disputes solely between the Commonwealth and Settling Defendants. Disputes arising under the Consent Decree between the Commonwealth and Settling Defendants that relate to: (1) the amount and/or payment of State Past Response Costs, State Interim Response Costs or State Future Response Costs owed to the Commonwealth, (2) assessment of stipulated penalties by the Commonwealth, (3) the adequacy of and/or compliance with access and Institutional Controls in which MassDEP holds a real property interest, or (4) the adequacy of

and/or compliance with the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which the MassDEP holds a real property interest, shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 72 through 77, except that each reference to EPA shall read as a reference to MassDEP, each reference to the Director of the Office of Site Remediation & Restoration, EPA Region 1, shall be read as a reference to the Assistant Commissioner for the Bureau of Waste Site Cleanup of the MassDEP, and each reference to the United States shall be read as a reference to the Commonwealth.

79. In the event that the Appropriate Area of Concern Defendant fails to comply with the requirements of this Consent Decree, unless excused under Section XIX (Force Majeure), such Appropriate Area of Concern Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 80 and 81 to the United States and the Commonwealth. "Compliance" by the Appropriate Area of Concern Defendant shall include timely and satisfactory completion of all activities or requirements under this Consent Decree or any work plan or other plan approved under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA, and any plans or other documents approved by MassDEP in the case of any Institutional Controls for which MassDEP is a grantee of a real property interest, pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

a. Except as provided in Subparagraph 79.b, the Appropriate Area of Concern Defendant shall pay 90% of stipulated penalties to the United States and shall pay 10% of stipulated penalties to the Commonwealth. However, except as provided in Subparagraph 79.b, when stipulated penalties are assessed by EPA for non-compliance with Institutional Control requirements under the remedial design and/or remedial action in the SOW, the Appropriate Area of Concern Defendant shall pay 50% of stipulated penalties to the United States and 50% of stipulated penalties to the Commonwealth.

b. The Appropriate Area of Concern Defendant shall pay 90% of stipulated penalties to the Commonwealth and 10% of stipulated penalties to the United States when MassDEP has assessed stipulated penalties for one of the six reasons set forth in Paragraph 84.

XXI. STIPULATED PENALTIES

80. The following stipulated penalties shall be payable per violation per day for any noncompliance except those identified in Paragraphs 81 and 82:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2500	1st through 14th day
\$5,000	15th through 30th day
\$10,000	31st day and beyond

81. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Sections X and XI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1000	15th through 30th day
\$2500	31st day and beyond

82. In the event that EPA, or as appropriate the Commonwealth, assumes performance of a portion or all of the Work pursuant to Paragraph 100 of Section XXII (Covenants Not to Sue by Plaintiffs), the Appropriate Area of Concern Defendant shall be liable for a stipulated penalty in the amount of:

AOC 1:	\$246,000
AOC 2:	\$65,400
AOC 3:	\$66,600
AOC 4:	\$53,400
AOC 5:	\$61,200
AOC 6:	\$33,000
AOC 7:	\$73,800

83. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Appropriate Area of Concern Defendant of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1-New England, under Paragraph 75.b or 76.a or by the Assistant Commissioner of Waste Site Cleanup of MassDEP, under Paragraph 78 of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the disputing Settling Defendant(s) reply to EPA's, or as the case may be, MassDEP's, Statement of Position is received until the date that the Director or Assistant Commissioner issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

84. Following EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the Appropriate Area of Concern Defendant has failed to comply with a requirement of this Consent Decree, EPA may give such Appropriate Area of Concern Defendant written notification of the same and describe the noncompliance. Following MassDEP's determination that the Appropriate Area of Concern Defendant has: 1) failed to pay State Past Response Costs, State Interim Response Costs or State Future Response Costs to the Commonwealth as required by Section XVI (Payments for Response Costs), 2) failed to provide the Commonwealth or MassDEP with any written or oral notice in accordance with the requirements of this Consent Decree, 3) failed to provide the Commonwealth or MassDEP any report or other document in accordance with the requirements of this Consent Decree, 4) failed to comply with the access requirements established pursuant to this Consent Decree, 5) failed to comply with the terms of any Institutional Controls established pursuant to this Consent Decree for which MassDEP, at the time of such violation, is the holder of any real property interest therein, or 6) fails to perform the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which MassDEP holds a real property interest, the MassDEP may give such Appropriate Area of Concern Defendant written notification of the same and describe the noncompliance. EPA, or the Commonwealth for the items set forth in this Paragraph only, may send the non-complying Appropriate Area of Concern Defendant a written

demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA, or the Commonwealth for the items set forth in this Paragraph, has notified the non-complying Appropriate Area of Concern Defendant of a violation.

85. All penalties owed to the United States and/or the Commonwealth under this Section shall be due and payable to the United States and/or the Commonwealth within thirty (30) days of the responsible Appropriate Area of Concern Defendant's receipt from EPA or MassDEP (as set forth in Paragraph 84) of a demand for payment of the penalties, unless the responsible Appropriate Area of Concern Defendant invokes the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1 Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 0157, the DOJ Case Number 90-11-3-90/2, and the name and address of the party making payment. All payments to the Commonwealth under this Section shall be paid by certified or cashiers check(s) made payable to the Commonwealth of Massachusetts, shall reference Iron Horse Park Superfund Site, MassDEP Site # 3-0240-03, and shall be mailed to Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, MA 12108. The responsible Appropriate Area of Concern Defendant shall cause copies of each such check(s) and transmittal letter(s) to be sent to Mark Collins, Branch Chief, Cost Recovery, Fees and Revenue Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108. The responsible Appropriate Area of Concern Defendant shall also send copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), to the United States and to the Commonwealth as provided in Section XXVII (Notices and Submissions).

86. The payment of penalties shall not alter in any way an Appropriate Area of Concern Defendant's obligation to complete the performance of the Work required under this Consent Decree.

87. Penalties shall continue to accrue as provided in Paragraph 83 during any dispute resolution period under Section XX (Dispute Resolution) as to disputes with the United States or as to disputes with the Commonwealth concerning the matters listed in Paragraph 84, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the Commonwealth that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and/or the Commonwealth within thirty (30) days of the agreement or the receipt of EPA's or the Commonwealth's decision or order;

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

c. If the District Court's decision is appealed by any Party, the responsible Appropriate Area of Concern Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States or the Commonwealth into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and

the Commonwealth or to the responsible Appropriate Area of Concern Defendant to the extent that they prevail.

88. If the responsible Appropriate Area of Concern Defendant fails to pay stipulated penalties when due, the United States or the Commonwealth may institute proceedings to collect the penalties, as well as interest. The responsible Appropriate Area of Concern Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 84. Interest on any unpaid balance due to the United States shall accrue at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. Interest on any unpaid balance due to the Commonwealth shall accrue at the rate established pursuant to M. G. L. c. 21E, § 13.

89. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of the Appropriate Area of Concern Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, M. G. L. c. 21E, and M. G. L. c. 21A. Provided, however, that the United States and the Commonwealth shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

90. Notwithstanding any other provision of this Section, the United States, and the Commonwealth for penalties owed only to the Commonwealth, may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree. The Appropriate Area of Concern Defendant shall have no obligation or responsibility for stipulated penalties arising out of or related to an Area of Concern for which it is not responsible under Schedule A.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

91. United States' Covenants not to Sue the Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 92, 93, and 99 of this Section, the United States covenants not to sue or to take administrative action against the Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of the Work at OU3 and for recovery of United States Past Response Costs and United States Future Response Costs. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Consent Decree. With respect to future liability for each Area of Concern, these covenants not to sue for each Appropriate Area of Concern Defendant shall take effect upon the Certification of Completion of Remedial Action by EPA for such Area of Concern pursuant to Section XIV (Certification of Completion). Each Appropriate Area of Concern Defendant's covenants not to sue are conditioned upon the satisfactory performance by the Appropriate Area of Concern Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Appropriate Area of Concern Defendant and do not extend to any other person.

92. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent 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:

- a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action for a specific Area of Concern:

- (1) conditions at the Site, previously unknown to EPA, are discovered,
- or
- (2) information, previously unknown to EPA, is received, in whole or in part,

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

93. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent 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:

- a. to perform further response actions relating to the Site, or
 - b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action for a specific Area of Concern:
 - (1) conditions at the Site, previously unknown to EPA, are discovered,
- or
- (2) information, previously unknown to EPA, is received, in whole or in part,

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

94. For purposes of Paragraph 92, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for Operable Unit 3 of the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 93, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

95. Commonwealth's Covenants not to Sue Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 96, 97, and 99 of this Section, the Commonwealth, on behalf of the MassDEP, covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107 of CERCLA and M. G. L. c. 21E for performance of the Work at OU3 and for recovery of State Past Response Costs and State Future Response Costs. As to liability for reimbursement of State Past Response Costs, the foregoing covenant not to sue or to take administrative action against Settling Defendants shall take effect upon Settling Defendants' performance of their obligation to reimburse the Commonwealth in accordance with Paragraphs 56 and 59 (Payments for Past Response Costs) of Section XVI (Payments for Response Costs). As to liability for reimbursement of State Future Response Costs and performance of the Work, these covenants

not to sue or to take administrative action shall take effect, as to each Appropriate Area of Concern Defendant, upon the Certification of Completion of Remedial Action by EPA pursuant to Section XIV (Certification of Completion) for all Areas of Concern for which such Appropriate Area of Concern Defendant is responsible. The Commonwealth's covenants not to sue as to each Appropriate Area of Concern Defendant are conditioned upon the satisfactory performance by such Appropriate Area of Concern Defendant of all of its obligations under this Consent Decree. These covenants not to sue extend only to each Appropriate Area of Concern Defendant and do not extend to any other person.

96. Commonwealth's Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of MassDEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under M. G. L. c. 21E, seeking to compel all or any of the Settling Defendants (1) to perform further response actions relating to the Site, or (2) to reimburse the Commonwealth for additional costs of response actions relating to the Site, to the extent that EPA has determined that such response actions required under (1) and (2) above in this subparagraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to EPA's Certification of Completion of the Remedial Action for a specific Area of Concern:

- i. conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth, or
- ii. information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part,

and the Commonwealth determines, pursuant to M. G. L. c. 21E, based on these previously unknown conditions or this information together with any other relevant information, that the Remedial Action is not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

97. Commonwealth's Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of MassDEP, reserves and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States, to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or M. G. L. c. 21E, seeking to compel all or any of the Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the Commonwealth for additional costs of such response actions relating to the Site to the extent that EPA has determined that such response actions required under (1) and (2) above in this subparagraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to Certification of Completion of the Remedial Action for a specific Area of Concern:

- i. conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth after the Certification of Completion, or
- ii. information previously unknown to the Commonwealth is received by the Commonwealth, in whole or in part, after the Certification of Completion,

and the Commonwealth determines, pursuant to M. G. L. c. 21E, based on these previously unknown conditions or this information together with other relevant information, that the Remedial Action is not protective of health, safety, public welfare or the environment. The United

States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

98. For purposes of Paragraph 96, the information and the conditions known to the Commonwealth shall include only that information and those conditions known to MassDEP as of the date the ROD was signed and set forth in the Record of Decision for Operable Unit 3 of the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 97, the information and the conditions known to the Commonwealth shall include only that information and those conditions known to MassDEP as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by MassDEP pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

99. General reservations of rights. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters not expressly included within Plaintiffs' covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against Settling Defendants, including but not limited to, the following:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
 - b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of Operable Unit 3;
 - c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage or disposal or arrangement for the transportation, treatment, storage or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;
 - d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - e. criminal liability;
 - f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
 - g. liability, prior to Certification of Completion of the Remedial Action for each Area of Concern, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Section XXXIII (Modification of the SOW or Related Work Plans);
 - h. liability for additional operable units at the Site or the final response action;
- and
- i. groundwater remediation at the Site.

100. Work Takeover.

a. In the event EPA determines that the Appropriate Area of Concern Defendant has (i) ceased implementation of any portion of the Work for which it is responsible pursuant to Schedule A, or (ii) is seriously or repeatedly deficient or late in the performance of the Work for which it is responsible pursuant to Schedule A, or (iii) is implementing the Work for

which it is responsible pursuant to Schedule A in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to such Appropriate Area of Concern Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide the Appropriate Area of Concern Defendant a period of fifteen (15) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the fifteen-day notice period specified in Paragraph 100(a), the Appropriate Area of Concern Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work for which such Appropriate Area of Concern Defendant is responsible pursuant to Schedule A as EPA deems necessary ("Work Takeover"). EPA shall notify the Appropriate Area of Concern Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 100(b).

c. The Appropriate Area of Concern Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 100(b). However, notwithstanding such Appropriate Area of Concern Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 100(b) until the earlier of (i) the date that the Appropriate Area of Concern Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XX (Dispute Resolution) requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Appropriate Area of Concern Defendant fails to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 50, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that the Appropriate Area of Concern Defendant shall pay pursuant to Section XVI (Payment for Response Costs).

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

XXIII. COVENANTS BY SETTLING DEFENDANTS

102. Covenant Not to Sue. Subject to the reservations in Paragraph 103, each Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Commonwealth, including any department, agency or instrumentality of the United States or the Commonwealth, with respect to its Work, past response actions, United States Past and Future Response Costs, and State Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507)

through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law, except as specifically provided in Paragraphs 60-64 and Appendix G of this Consent Decree;

b. any claims under CERCLA Sections 107 or 113 or M. G. L. c. 21E, related to Operable Unit 3, or

c. any claims arising out of response activities at Operable Unit 3, including claims based on EPA's or MassDEP's, as the case may be, selection of response actions, oversight of response activities or approval of plans for such activities, including any claim under the United States Constitution, the Massachusetts 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.

Except as provided in Paragraph 105 (Waiver of Claims Against De Micromis Parties) and Paragraph 111 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States or the Commonwealth brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 92, 93, 96, 97, 99(b)-(d) and (g)-(i), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the Commonwealth is seeking pursuant to the applicable reservation.

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

104. Other than as specifically provided in Section XVII and Appendix G, nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

105. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to Operable Unit 3, including for contribution, against any person where the person's liability to Settling Defendants with respect to Operable Unit 3 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at Operable Unit 3, or having accepted for transport for disposal or treatment of hazardous substances at Operable Unit 3, if:

a. any materials contributed by such person to Operable Unit 3 constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at Operable Unit 3; and

b. any materials contributed by such person to Operable Unit 3 containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at Operable Unit 3, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

c. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to Operable Unit 3 by such person contributed or could contribute significantly to the costs of response at Operable Unit 3. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to Operable Unit 3 against such Settling Defendant.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

106. Except as provided in Paragraph 105 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 105 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Operable Unit 3 against any person not a Party hereto.

107. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree for all of Operable Unit 3. The matters addressed in this Consent Decree are the State Past Response Costs, the United States Past Response Costs, the State Future Response Costs, the United States Future Response Costs, the State Interim Response Costs, the United States Interim Response Costs, the Remedial Design, the Remedial Action, and the Work as described herein for all of Operable Unit 3; however, the matters addressed in this Consent Decree do not include those response costs or response actions as to which the United States and the Commonwealth have reserved their rights under this Consent Decree.

108. The Commonwealth and Settling Defendants agree, and by entering this Consent Decree this Court finds, that pursuant to M. G. L. c. 21E, § 3A(j)(2), Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from claims brought pursuant to M. G. L. c. 21E, regarding matters addressed in this Consent Decree for all of Operable Unit 3, for cost recovery, contribution, and equitable share as to those persons receiving notice and an opportunity to comment on this Consent Decree in accordance with M. G. L. c. 21E, § 3A(j)(2). As of the date of entry of this Consent Decree, this Consent Decree constitutes a "judicially approved settlement," as that term is used in Mass. Gen. L. ch. 21E, § 3A(j)(2). For purposes of this paragraph, "matters addressed" shall be as defined in Paragraph 107. The ninety (90) day comment period shall commence 30 days after the date of lodging of this Consent Decree. Settling Defendants' failure to provide timely and adequate notice to one person shall not affect their rights as against any other person who received such notice.

109. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or claim.

110. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the Commonwealth within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the Commonwealth

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.

111. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other appropriate relief relating to Operable Unit 3, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII(Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

112. Each Settling Defendant shall provide to EPA and the Commonwealth, upon request, copies of all documents and information within its possession or control or that of their contractors or agents relating to activities at Operable Unit 3 or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to its Work. Each Settling Defendant shall also make available to EPA and the Commonwealth at reasonable times and at a reasonable location, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of its Work.

113. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the Commonwealth, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the Commonwealth under this Consent Decree to the extent permitted by and in accordance with State law. Documents or information determined to be confidential by MassDEP will be afforded by the Commonwealth the protection specified under State law. If no claim of confidentiality accompanies documents or information when they are submitted to the Commonwealth, or if MassDEP has notified Settling Defendants that the documents or information are not confidential under State law, the public may be given access to such documents or information without further notice to Settling Defendants.

c. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6)

the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

114. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around Operable Unit 3.

XXVI. RETENTION OF RECORDS

115. Until 10 years after the Appropriate Area of Concern Defendant's receipt of EPA's notification pursuant to Paragraph 53.b of Section XIV (Certification of Completion of the Work), the Appropriate Area of Concern Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at Operable Unit 3, regardless of any corporate retention policy to the contrary. Until 10 years after the Appropriate Area of Concern Defendant's receipt of EPA's notification pursuant to Paragraph 53.b of Section XIV (Certification of Completion), the Appropriate Area of Concern Defendant shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

116. At the conclusion of this document retention period, the Appropriate Area of Concern Defendant shall notify the United States and the Commonwealth at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the Commonwealth, the Appropriate Area of Concern Defendant shall deliver any such records or documents to EPA and/or MassDEP. The Appropriate Area of Concern Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Appropriate Area of Concern Defendant asserts such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Area of Concern Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

117. The Appropriate Area of Concern Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding Operable Unit 3 since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding Operable Unit 3 and that it has fully complied with any and all EPA requests for information pursuant to Section 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 MassDEP requests for information pursuant to M. G. L. c. 21E, if any.

XXVII. NOTICES AND SUBMISSIONS

118. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other 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. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. 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, the Commonwealth, MassDEP, and each Appropriate Area of Concern Defendant, respectively.

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
Re: DJ # 90-11-3-90/2

As to EPA:

Don McElroy
EPA Project Coordinator
United States Environmental Protection Agency
Region 1, New England
One Congress Street Suite 1100
Boston MA 02114

As to the Regional Financial
Management Officer:

Regional Financial Management Officer
United States Environmental
Protection Agency Mail Code MCO
Region 1, New England
One Congress Street Suite 1100
Boston MA 02114

As to the Commonwealth:

Carol Iancu, Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
RE: Iron Horse Park Superfund Site - OU3

and

Janet Waldron
State Project Manager
Iron Horse Park Superfund Site - OU3
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

As to MassDEP:

Janet Waldron
State Project Manager
Iron Horse Park Superfund Site - OU3
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

As to each Appropriate Area of Concern

Defendant:

For the MBTA:

Massachusetts Bay Transportation Authority
Attn: William A. Mitchell, Jr., General Counsel
Ten Park Plaza, 7th Floor
Boston MA 02116-3974

For BNZ:

Josh Hulce
Chief Executive Officer
BNZ Materials, Inc.
6901 South Pierce Street, Suite 260
Littleton, Colorado 80128

with a copy to:

Robert F. Fitzpatrick, Jr., Esq.
WilmerHale
60 State Street
Boston, MA 02109

For B&M:

Dana Banks
Environmental Director
Boston & Maine Corporation
Iron Horse Park
High Street
North Billerica, MA 01862

with a copy to:

John Bashaw, Esq.
Day Pitney LLP
One International Place
Boston MA 02110

XXVIII. EFFECTIVE DATE

119. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, or a motion to enter is granted as reflected by the Court's docket, whichever is earlier, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the map of the Operable Unit 3 Areas of Concern. See the Definition Section of this Consent Decree for a list of the names by which the seven AOCs are generally called.

"Appendix D" is the map of the Site.

"Appendix E" is the complete list of Settling Defendants.

"Appendix F" is the Form of Grant of Environmental Restriction and Easement.

"Appendix G" is the Preauthorization Decision Document.

"Appendix H" is the Financial Assurance Amount.

XXXI. COMMUNITY RELATIONS

122. Settling Defendants shall propose to EPA and MassDEP their participation in the community relations plan to be developed by EPA after a reasonable opportunity for review and comment by the Commonwealth. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA or the Commonwealth, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Commonwealth to explain activities at or relating to Operable Unit 3.

XXXII. MODIFICATION

123. Material modifications to the SOW may be made only by written notification to and written approval of the United States, the Appropriate Area of Concern Defendant, and the Court. Prior to providing its approval to any material modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification.

124. Modifications to the schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Appropriate Area of Concern Defendant. Such non-material modifications will become effective upon agreement of the parties.

125. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 124 may be made only by written notification to and written approval of the United States, the Commonwealth, and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and approval of the United States, the Commonwealth, the Settling Defendants, and the Court.

126. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

127. For purposes of this Section, the Consent Decree shall not include the SOW or other attachments to the Consent Decree.

XXXIII. DISTRIBUTION OF MANVILLE SHARE

128. Johns Manville (f/k/a Schuller International, Inc., f/k/a Manville Sales Corporation)

and related Chapter 11 Debtors ("JM"), which is a party to this Consent Decree but not within the definition of "Settling Defendant(s)" hereunder, shall pay a total of \$1,195,984, to resolve its liability at OU3. JM's share is determined pursuant to the *Stipulation and Order of Dismissal and Settlement* that was entered as an order of the Court on October 24, 1994 in Manville Corp. et al. v. United States of America, United States District Court for the Southern District of New York (91 Civ. 6683 [RWS]) ("Global Settlement Order").

129. At AOC 7, JM shall pay \$1,145,984, which constitutes 55% of the Manville Response Cost Liability for AOC 7. A total of \$800,000 of this amount shall be paid by no later than 30 days after the Effective Date. Unless otherwise agreed to by JM and the United States, the remaining portion of the Manville Share for AOC 7, \$345,984 shall be paid no later than January 30 of the year following the date 30 days after the Effective Date, and shall be credited to the Annual Cap for the year in which this remaining portion is due, pursuant to Paragraph 67 of the Global Settlement Order.

130. JM shall pay \$50,000, in full and final settlement of JM's liability at AOC 6, to Boston & Maine Corporation by no later than 30 days after the Effective Date. This payment to Boston & Maine Corporation shall be made in accordance with instructions to be provided to JM by Boston & Maine Corporation, and JM shall provide notice of such payment to the United States. In the event that Boston & Maine Corporation fails to provide instructions for payment at least 15 days before such payment is due, JM shall make this \$50,000 payment in accordance with directions provided by the United States. Upon payment of this amount plus the \$800,000 initial payment referenced in Paragraph 129, JM shall have made payment equaling the Annual Cap of \$850,000 for the year in which these payments are due, as set forth in Paragraph 67 of the Global Settlement Order.

131. The payments by JM in settlement of JM's liability at AOC 7 referenced in Paragraph 129 shall be made to a third party account, such as a trust or escrow, pursuant to agreement with BNZ Materials, Inc. ("BNZ"). JM shall provide notice of such payments to the United States. Under no circumstances shall BNZ be relieved of any of its obligations under this Consent Decree, including but not limited to its obligation to perform the Work at AOC 7, as a result of any dispute between JM and BNZ regarding payment by JM to BNZ or disbursement of funds from a third party trust or escrow account. Any dispute between JM and BNZ regarding payment by JM to BNZ or disbursement of funds from a third party trust or escrow account shall not constitute Force Majeure pursuant to Section XIX of this Consent Decree.

Within 30 days of issuance of EPA's Certification of Completion of the Remedial Action for AOC 7, a copy of which shall be provided to JM, JM shall be entitled to have returned to it any funds remaining in the third party account in excess of 55% of the Manville Share (72%) times an estimated amount, agreed upon by JM and BNZ, necessary to satisfy any remaining financial obligations relating to the Work for AOC 7 (including O & M, United States Future Response Costs, and State Future Response Costs). The escrow or trust agreement shall provide that notice of such return of funds to JM be made to the United States. Within 30 days after EPA sends notice under Paragraph 53.b. that all Work on AOC 7 is complete, a copy of which shall be provided to JM, JM shall be entitled to any remaining funds in the third party account. The escrow or trust agreement shall provide that notice of this final return of funds to JM be made to the United States.

132. With respect to JM and the United States, Paragraph 70 of the Global Settlement Order, and not the provisions of this Consent Decree, shall control any applicable covenants not

to sue or reservations resulting from JM's payment of 55% of the Manville Response Cost Liability for OU3. The United States reserves the right to recover from JM 55% of the Manville Share (72%) times any response costs that EPA (to the extent such response costs of EPA are not reimbursed) or BNZ incurs with respect to AOC 7, consistent with the remedy selected in the ROD, that exceed \$2,893,900, which additional funds shall be placed in the third party account; provided, however, that any interest accruing on the third party account referenced in the previous paragraph shall be offset against such additional amounts the United States is otherwise entitled to seek from JM before the United States seeks to recover any additional funds from JM under this provision. The United States reserves all of its existing rights with respect to the recovery of all of its past and future response costs for any additional operable units at the Site, and/or for any natural resource damages at the Site, and JM reserves all of its existing defenses to such claims. Settling Defendants assert that they have claims, demands and/or causes of action against JM in connection with OU3. Settling Defendants covenant not to sue or assert any such claims, demands and/or causes of action against JM in connection with OU3. In addition, the United States and the Settling Defendants agree that it is their intent that, upon JM's payment of the amounts set forth in this Section, the contribution protection provisions of Paragraph 78 of the Global Settlement Order shall apply to JM with respect to OU3.

133. The Commonwealth reserves all of its rights under CERCLA and M.G.L. c. 21E with respect to JM, in relation to Operable Unit 3. JM reserves all of its defenses with respect to the Commonwealth in relation to OU3.

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

134. This Consent Decree shall be lodged with the Court and subject to public notice and comment periods in accordance with 28 C.F.R. § 50.7 and M. G. L. c. 21E, § 3A(j)(2). The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate. In the event of the United States' withdrawal from this Consent Decree, the Commonwealth reserves its right to withdraw from this Consent Decree. The Commonwealth also reserves the right to withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law, or if comments received disclose facts or considerations which show that the Consent Decree's termination of the rights of third parties by operation of M. G. L. c. 21E, § 3A(j)(2) would render the Consent Decree unfair. In the event of the Commonwealth's withdrawal from this Consent Decree, the United States reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice and agree not to challenge entry or the terms of this Consent Decree.

XXXV. SIGNATORIES/SERVICE

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

136. Each 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 the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

137. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number 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 Consent Decree. Settling Defendants 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.

XXXVI. FINAL JUDGMENT

138. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth, and the Settling Defendants. 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 _____, 2007.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boston & Maine Corporation et al., relating to the Iron Horse Park Superfund Site Operable Unit 3.

FOR THE UNITED STATES OF AMERICA

Date

Ronald J. Tenpas
~~Acting~~ Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

11/20/07
Date

Susan M. Akers
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4831

9/24/07
Date

Robert W. Varney
Regional Administrator, Region 1
United States Environmental Protection Agency
One Congress Street Suite 1100
Boston MA 02114

9/21/07
Date

Susan A. Scott
Enforcement Counsel
United States Environmental Protection Agency
One Congress Street Suite 1100
Boston MA 02114

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boston & Maine Corporation et al., relating to the Iron Horse Park Superfund Site Operable Unit 3.

FOR THE COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

Date: 9/28/07

By Carol Iancu, BBO # 635626
Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place, Rm 1813
Boston, MA 02108
(617) 727-2200, ext. 2428

Date: 9/28/07

Arlene O'Donnell, Deputy Commissioner
Department of Environmental Protection
One Winter Street
Boston, MA 02108
(617) 292-5500

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boston & Maine Corporation et al., relating to the Iron Horse Park Superfund Site Operable Unit 3.

FOR Boston + Maine Corp.

9/8/07
Date

Signature: _____

Name (print): Rob Clifford

Title: Sr. VP

Address: 14 Aviation Ave.
Portsmouth, NH 03801

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

Name (print): Rob Clifford

Title: Sr. VP

Address: 14 Aviation Ave.
Portsmouth, NH 03801

Ph. Number: (603) 766 2002

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boston & Maine Corporation et al., relating to the Iron Horse Park Superfund Site Operable Unit 3.

FOR BNZ Materials, Inc.

Date

Signature: _____

Name (print): J.T. Hulce

Title: Chairman and CEO

Address: 6901 South Pierce Street, Suite 260
Littleton, CO 80128

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

Name (print): Robert F. Fitzpatrick, Jr.

Title: Attorney for BNZ Materials, Inc.

Address: WilmerHale LLP
60 State Street
Boston, MA 02109

Ph. Number: 617-526-6000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boston & Maine Corporation et al., relating to the Iron Horse Park Superfund Site Operable Unit 3.

FOR Johns Manville

9/17/07
Date

Signature: _____

Name (print): Todd Raba

Title: President & CEO

Address: Johns Manville
717 17th Street
Denver, CO 80202

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

Name (print): Brent Tracy

Title: Sr. Environmental Counsel

Address: Johns Manville
717 17th Street
Denver, CO 80202

Ph. Number: (303) 978-3268

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boston & Maine Corporation et al., relating to the Iron Horse Park Superfund Site Operable Unit 3.

FOR Massachusetts Bay Transportation Authority

September 20, 2007
Date

APPROVED AS TO FORM:

William A. Mitchell, Jr. SD
MBTA General Counsel
Ten Park Plaza, 7th Floor
Boston, MA 02116-3974

Signature _____
Name (print): Daniel A. Grabauskas
Title: General Manager
Address: Ten Park Plaza
Boston, MA 02116-3974

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

Name (print): William A. Mitchell, Jr.
Title: General Counsel
Address: Massachusetts Bay Transportation Authority
Ten Park Plaza, 7th Floor
Boston, MA 02116-3974
Ph. Number: (617) 222-3160