

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

Bristol-Myers Squibb Company,
General Electric Company,
International Business Machines
Corporation, and
Pass & Seymour, Inc.

Defendants.

CIVIL ACTION NO. _____

CONSENT DECREE FOR REMEDIAL DESIGN/REMEDIAL ACTION

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Solvent Savers Superfund Site ("Site") in the Town of Lincklaen, Chenango County, New York, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") on October 1, 2007 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration on October 1, 2007 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

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

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in 1983.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced in November 1988, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA issued a Remedial Investigation ("RI") Report on July 23, 1990 and EPA issued a Feasibility Study ("FS") Report on July 23, 1990.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of a proposed plan for remedial action on July 23, 1990 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.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 29, 1990 as amended on September 29, 2006, in a ROD amendment on which the State has given its concurrence. Notice of the final plans was published in accordance with Section 117(b) of CERCLA.

K. On May 29, 1991, EPA issued an Administrative Order, Index No. II CERCLA-10214 (the "Remedial UAO"), to American Locker Group Inc., Bristol-Myers Squibb Company, General Electric Company, International Business Machines Corporation, and Pass & Seymour, Inc., requiring them to conduct the RD/RA selected in the September 1990 ROD.

L. On September 29, 2006, EPA amended the Remedial UAO ("amended Remedial UAO"). The amended Remedial UAO called for pre-design work and remedial design of the soil remedy in accordance with the amended ROD.

M. Based on the information presently available to EPA, EPA believes that the Work (as defined below) will be properly and promptly conducted by Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

O. Settling Defendants and Settling Federal Agency entered into a Settlement Agreement and Order in *State of New York v. Allied Corporation, et.al.*, 83 CIV 1619, consolidated with *United States of America v. American Locker Group, Inc., et.al.*, 92 CIV 0700 entered by the United States District Court of the Northern District of New York on October 13, 1992 ("Settlement Agreement"), whereby Settling Federal Agency agreed to a 10.73% share of response costs to be incurred by Settling Defendants and a 7% share of response costs to be incurred by EPA.

P. In 1998, Settling Defendants entered into supplemental agreements with Settling Federal Agency whereby Settling Federal Agency resolved its liability for response costs at the Site, and its obligations under the Settlement Agreement, through December 31, 1997.

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

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). This Court also has personal jurisdiction over 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 and upon Settling Defendants and their heirs, 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. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site 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. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their 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 Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

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. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, 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 107.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the 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 VII, 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 87 of Section XXI. Future Response Costs shall also include all Interim Response Costs.

“Groundwater Activities” shall mean those actions required by the ROD and specified in Paragraph 12((b)(12) through (14).

“Institutional Controls” shall mean non-engineered instruments, such as easements or restrictive covenants running with the land, state or local laws, regulations or ordinances, or other devices, that are intended to: (I) limit land, water and/or resource use to minimize the potential for human exposure to hazardous substance, pollutants, or contaminants at the Site and/or (ii) limit land, water and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action.

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

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between May 12, 2007 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.“Municipal sewage sludge” or “MSS” 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” or “MSW” 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.

“NYSDEC” shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the remedy selected in the ROD as required under the Operation and

Maintenance Manual approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

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

"Parties" shall mean the United States and Settling Defendants.

"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 the Site from June 30, 1995 through May 12, 2007, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the soil and groundwater cleanup standards and other measures of achievement of the goals of the remedy selected in the ROD, set forth in pages 16, 25, and 36-37 of the ROD, pages 8-9 of the amended ROD, and Sections II.A. and V of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean both the EPA Record of Decision relating to the Site signed by EPA on September 29, 1990 and Amendment to the Record of Decision signed by EPA on September 29, 2006, and all attachments thereto. The decision documents referred to as the Record of Decision or ROD are collectively attached hereto as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance performed after the Certification of Completion of the Remedial Action in Paragraph 49, to be undertaken by Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Designs and Remedial Action Work Plans and other plans approved by EPA.

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

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

"Settling Defendants" shall mean Bristol-Myers Squibb Company, General Electric Company, International Business Machines Corporation, and Pass & Seymour, Inc. The Settling Defendants have agreed to indemnify American Locker Group, Inc., a recipient of the Remedial UAO, with respect to all costs and liabilities relating to the Site, and American Locker Group, Inc. shall have no responsibility to perform or finance any requirements or work under this Consent Decree.

"Settling Federal Agency" shall mean the United States Air Force which is resolving any claims which have been or could be asserted against it with regard to the Site or the Settlement Agreement.

"Site" shall mean the Solvent Savers Superfund Site, encompassing approximately 13 acres, located at Union Valley Road, in the Town of Lincklaen, Chenango County, New York and all areas to which contamination has migrated. The Site is depicted generally on the map attached as Appendix C.

"Soil Activities" shall mean those actions required by the ROD and specified in Paragraph 12((b)(1) through (11), below.

"Solvent Savers Superfund Site Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3).

"State" shall mean the State of New York.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, 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 Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"TAGM" shall mean Technical and Administrative Guidance Memorandum: Determination of Soil Cleanup Objectives and Cleanup Levels, NYSDEC, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, January 24, 1994 (No. 94-HWR-4046).

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA and Settling Federal Agency.

"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); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (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 the Site by the design and implementation of response actions at the Site by Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants, as provided in this Consent Decree and the claims of Settling Defendants which have been or could have been asserted against the United States with regard to this Site for reimbursement of costs.

6. Commitments by Settling Defendants and Settling Federal Agency.

a. Settling Defendants shall finance and 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 Settling Defendants and approved by EPA pursuant to this Consent Decree and Settling Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

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

c. The United States on behalf of Settling Federal Agency shall reimburse Settling Defendants for 10.73% of response costs paid by Settling Defendants and 7% of response costs paid by EPA in accordance with the procedures further detailed in Paragraph 53 below.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants 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. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

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, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XVIII (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.

VI. PERFORMANCE OF WORK BY SETTLING DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within ten (10) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and

qualifications of any contractor proposed to be the Supervising Contractor. The proposed Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Respondent (as the "practice of engineering" is defined at Section 7201 of the New York State Education Law), must comply with all applicable New York State legal requirements regarding the practice of engineering within the State of New York, including all applicable requirements of the New York State Education Law and Business Corporation Law. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval of the 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. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.

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

10. Remedial Design/Remedial Action.

a. Settling Defendants shall fully implement and comply with the SOW which is attached hereto as Appendix B and incorporated herein by reference. The Work to be performed by Settling Defendants pursuant to this Consent Decree shall at a minimum achieve the requirements of, and be performed in a manner consistent with, the ROD, the SOW and this Consent Decree.

b. Settling Defendants shall comply with the Remedial UAO and amended Remedial UAO and shall perform all Work required under the Remedial UAO and amended Remedial UAO in accordance with the terms of the Remedial UAO and amended Remedial UAO, until such time as the Remedial UAO and amended Remedial UAO are superseded by this Consent Decree pursuant to this Paragraph. EPA hereby determines that upon entry of this Consent Decree by the Court, the Remedial UAO and amended Remedial UAO shall at that time be superseded and terminated with respect to all subsequent obligations of Settling Defendants. However, if this Consent Decree is not entered by the Court, the Remedial UAO shall remain in full force and effect. Any documents that are required to be submitted under this Consent Decree that have been submitted by Settling Defendants and approved in writing by letter or e-mail by EPA pursuant to the Remedial UAO and amended Remedial UAO need not be resubmitted after the date that this Consent Decree supersedes the Remedial UAO, except as may be required pursuant to Section VI.12. Any documents, including but not limited to the Soil RD Work Plan, submitted to EPA by Settling Defendants pursuant to the Remedial UAO or amended Remedial

UAO and approved by EPA in writing prior to entry of this Consent Decree shall be deemed to be incorporated into and made an enforceable part of this Consent Decree. If the Soil RD Work Plan, which was submitted pursuant to the amended Remedial UAO, is not approved by EPA prior to entry of this Consent Decree by the Court, such Work Plan shall be deemed to have been submitted pursuant to this Consent Decree and upon approval by EPA, shall be incorporated into and made an enforceable part of this Consent Decree.

c. Certain portions of the Work have commenced in accordance with the Remedial UAO prior to the Effective Date. To the extent that Settling Defendants have fulfilled obligations under the Remedial UAO that are also required by this Consent Decree, Settling Defendants shall also be deemed to have fulfilled such obligations under this Consent Decree.

11. Settling Defendants 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.

12. 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 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 12 and Paragraph 50 only, the "scope of the remedy selected in the ROD" is:

Soil Activities:

(1) Excavation down to the water table of approximately 600 cubic yards of volatile organic compound (VOC)-contaminated soils (tetrachloroethylene, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, toluene, 1,2-dichloroethylene and total xylenes) exceeding NYSDEC cleanup objectives (TAGM) for the individual VOCs noted, approximately 4,600 cubic yards of polychlorinated biphenyl (PCB)-contaminated soils exceeding NYSDEC TAGM objectives for PCBs, and approximately 1,400 cubic yards of VOC- and PCB-contaminated soils exceeding the respective TAGM objectives. The excavation will be undertaken during seasonally low water level conditions. PCB-contaminated soils within the fluctuating water table zone which are considered principal threat waste (*i.e.*, they contain greater than 100 mg/kg) will be excavated to the bottom of the fluctuating water table zone or the water table, whichever is lower at the time of the excavation effort. The contaminated soils in the saturated zone (below the water table) will be addressed as part of the groundwater remedy;

(2) Performance of VOC treatability studies to determine if on-Site pretreatment will be effective in reducing VOC levels to below the concentrations required by the RCRA land disposal restrictions in soils contaminated with both PCBs and VOCs;

- (3) Depending on the results of the VOC treatability studies, on-Site pretreatment of the soils prior to off-Site disposal or, if pretreatment will not provide the desired degree of treatment, then excavation and removal for off-Site treatment (e.g., incineration) of the VOC contaminated soils;
- (4) Performance of treatability studies to determine if off-Site stabilization/immobilization will be effective in reducing the mobility of the principal threat waste soils by 90% or greater;
- (5) Depending upon the results of the principal threat waste treatability studies, either off-Site treatment (e.g., incineration) of all principal threat waste soils (approximately 630 cubic yards of the PCB-contaminated soils exceeding 100 mg/kg) or if the treatability studies show that stabilization/immobilization will provide the desired reduction in mobility, then the principal threat waste soils may be subject to off-Site stabilization/immobilization followed by off-Site disposal at an EPA approved facility(ies);
- (6) Off-Site disposal of PCB contaminated soils with PCB concentrations less than 100 mg/kg at an EPA approved facility(ies);
- (7) Installation of a readily visible and permeable subsurface demarcation delineating the interface between soils containing 1 mg/kg PCBs and higher PCB levels (i.e., greater than 1 mg/kg) before backfilling;
- (8) Backfilling with clean fill and re-vegetation of all excavated areas;
- (9) Implementation of institutional controls in the form of an environmental easement/restrictive covenant to be filed in the property records of Chenango County in an effort to limit exposure to contaminated soil by prohibiting the excavation or disturbance of soil below two feet by any interested party unless such disturbance follows a Site Management Plan ("SMP") The easement/covenant will instruct any interested party (such as a developer, contractor, utility, agricultural, or sewer company/worker, property owner, or resident that does excavation work on-Site) as to the appropriate steps to take if soil excavation below two feet will be necessary;
- (10) The development of a SMP to be included as part of the operation and maintenance of the Site, which provides for the proper sampling, handling, and treatment and/or disposal by the PRPs (if required) of subsurface soils containing PCBs greater than 1mg/kg if such soils are disturbed following the completion of the remedial action. The plan will include an inventory of the use restrictions on the Site and will delineate measures that will be taken for the protection of on-Site workers, the public, and the environment in the event of future subsurface soil disturbance. The plan will also describe procedures to confirm that the requisite

engineering (subsurface demarcation) and institutional controls are in place and that nothing has occurred that will impair the ability of said controls to protect public health or the environment. The plan will also provide for periodic certification by the performing party(ies) that the engineering and institutional controls are in place and remain protective;

(11) Sampling of the surface water, sediment, and biota in Mud Creek, prior to the implementation of the soil remedy to determine a baseline of PCB levels in these media. In addition, depending on the results of the baseline sampling, periodic sampling of the surface water, sediment, and biota of Mud Creek if necessary;

Groundwater Activities:

(12) Extraction and on-Site treatment, using chemical precipitation, air stripping and carbon adsorption of the contaminated groundwater in the underlying aquifer;

(13) Re-injection of treated water into the ground and/or discharge to the surface water; and

(14) Disposal of the treatment residue at an off-Site approved RCRA hazardous waste facility.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by or 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.

13. Settling Defendants acknowledge and agree that nothing in this Consent Decree, or the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW will achieve the Performance Standards.

14. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site 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.

(1) Settling Defendants 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. Settling Defendants 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.

(2) The identity of the receiving facility and state will be determined by Settling Defendants following the award of the contract for Remedial Action construction. Settling Defendants shall provide the information required by Paragraph 14.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants 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. Settling Defendants 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

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

16. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. Opportunity to Comment. 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.

18. Settling Defendants' Obligation to Perform Further Response Actions. If EPA selects further response actions for the Site, Settling Defendants shall undertake such further response actions to the extent that the reopeners conditions in Paragraph 83 or Paragraph 84 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopeners conditions of Paragraph 83 or Paragraph 84 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66 (record review).

19. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 18, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

20. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all design, compliance and monitoring samples in accordance with the procedures set forth in the Quality Assurance/Quality Control Project Plan ("QAPP") approved in writing by letter or e-mail by EPA (See SOW, Appendix B at Sections II and VI). If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree.

21. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA and its authorized representatives. Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of Settling Defendants' implementation of the Work.

22. Settling Defendants shall submit to EPA two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree within fifteen (15) days of the date when those results or data become available to Settling Defendants, unless EPA agrees otherwise. For data that must undergo data validation, such data will be submitted to EPA within 15 days following the completion of data validation. Upon request by EPA, Settling Defendants may submit data in electronic form provided such data is in a format that is compatible with EPA software and that is provided in database files and sizes to be specified by EPA.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

24. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of Settling Defendants (control will not be considered to include an option or options to purchase property), such Settling Defendant shall:

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

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 87 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 XXIV (Access to Information);
- (9) Assessing Settling Defendants' compliance with this Consent Decree; and
- (10) Determining whether the Site 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 the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such use restrictions are as follows:

- (1) restriction of any excavation below the soil cover's demarcation layer at two feet below ground surface unless the excavation activities are in compliance with the EPA-approved SMP;
- (2) restriction of any new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with an EPA approved SMP.

c. execute and record in the Chenango County Clerk's Office, State of New

York , an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 24.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 24.b. of this Consent Decree, or other 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 Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons: (i) the State and its representatives, (ii) the other Settling Defendants and their representatives, and/or (iii) other appropriate grantees. Such Settling Defendants shall, within 45 days of EPA approval of the Final Soil Remedial Action Report (as specified in Section IV of the SOW), submit to EPA for review and approval with respect to such property:

- (1) A draft easement/covenant, in substantially the form that is enforceable under the laws of the State of New York, and
- (2) A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement/covenant and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Chenango County Clerk's Office. Within thirty (30) days of recording the easement/covenant, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement/covenant showing the clerk's recording stamps. The easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

25. If the Site, or any other 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 Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, 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 24.a. of this Consent Decree;

b. an agreement, enforceable by Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such use restrictions are as follows:

- (1) restriction of any excavation below the soil cover's demarcation layer at two (2) feet below ground surface unless the excavation activities are in compliance with the EPA-approved SMP;
- (2) restriction of any new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with the EPA-approved SMP; and
- (3) restriction of the use of groundwater at the Site as a source of potable or process water unless groundwater quality standards are met.

c. the execution and recordation in the Chenango County Clerk's Office, State of New York, of an easement/covenant, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 24.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 24.b. of this Consent Decree, or other 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 one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) one or more Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within forty-five (45) days of EPA approval of the Final Soil Remedial Action Report (as specified in Section IV of

the SOW), Settling Defendants shall submit to EPA for review and approval with respect to such property:

- (1) A draft easement/covenant, in substantially the form that is enforceable under the laws of the State of New York, and
- (2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances)

Within fifteen (15) days of EPA's approval and acceptance of the easement/covenant and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement/covenant shall be recorded with the Chenango County Clerk's Office. Within thirty (30) days of the recording of the easement, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. The easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

26. For purposes of Paragraphs 24 and 25 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money (including exercising options to purchase property) in consideration of access, access easements, land/water use restrictions/covenants, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 25.a. or 25.b. of this Consent Decree are not obtained within forty-five (45) days of the date of the remedial action, (b) or any access or land/water use easements/covenants required by Paragraph 25.c. of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of EPA approval of the Final Soil Remedial Action Report (as specified in Section IV of the SOW) or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 24.c.(1) or Paragraph 25.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within forty-five (45) days of EPA approval of the Final Soil Remedial Action Report (as specified in Section IV of the SOW), Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 24 or 25 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements/covenants running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

27. If EPA determines that land/water 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, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls and shall assist in the preparation of appropriate studies and documentation to implement such institutional controls.

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

X. REPORTING REQUIREMENTS

29. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State five (5) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, as appropriate, critical path diagrams, Gant charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) summarize any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken by Settling Defendants in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Upon request by EPA, Settling Defendants may submit monthly progress reports in electronic form to EPA. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 50.b. of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

30. Settling Defendants shall notify EPA 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 seven days prior to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours 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 Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656, or, if such person or his/her delegatee is unavailable, the EPA Region 2 Emergency 24-hour Hot Line at (732) 548-8730. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to EPA a written report, signed by Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, or other time frame if approved in writing by EPA Settling Defendants shall submit a report setting forth all actions taken in response thereto.

33. Settling Defendants shall submit seven copies of initial submissions of all plans, design documents, and reports required by the SOW. Settling Defendants shall submit two copies of all final plans, design documents, reports, and data required by the SOW or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit six copies of all such plans, reports and data to the State. The number of copies of submissions may be reduced by the submission of plans, reports and data in electronic form. Upon request by EPA Settling Defendants may submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree provided that such submissions are in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. An electronic submission of a plan, design document or report must be accompanied by at least one hard copy of the plan, design document or report.

34. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, 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, directing that Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within ten (10) days or such longer time as specified by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35(a), (b), or (c) Settling Defendants 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 XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the

submission to cure the deficiencies pursuant to Paragraph 35(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

37. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendants shall, within 10 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 XX, shall accrue during the 10-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 38 and 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

38. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendants 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. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

39. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX and Paragraph 37(a).

40. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon written approval or modification (by letter or e-mail) 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

41. Settling Defendants have identified, and EPA has approved Michael Miller of de maximis, inc. as Settling Defendants' Project Coordinator. Settling Defendants have identified, and EPA has approved, Rodney Sutch of de maximis, inc. as Settling Defendants' Alternate Project Coordinator. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Any change to Settling Defendants' Project Coordinator shall be

subject to disapproval by EPA. Settling Defendants' Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any of Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

42. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal 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 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.

43. EPA's Project Coordinator and Settling Defendants' Project Coordinator will conduct meetings or conference calls, at a minimum, on a monthly basis.

XIII. PERFORMANCE GUARANTEE

44. Within 30 days of the Effective Date, Settling Defendants shall demonstrate their financial ability to complete the Work by submitting to EPA copies of one or more Settling Defendants' most recent Annual Reports. Such Annual Reports shall demonstrate that Settling Defendants have sufficient assets to perform the Work, which is valued at \$14,821,000. Each year thereafter, until the completion of the Work, Settling Defendants shall submit one or more Settling Defendants' most recent Annual Reports to EPA within thirty (30) days of publication of such reports. In the event that EPA determines at any time that the financial assurances provided by the Annual Reports do not demonstrate Settling Defendants ability to complete the Work, then Settling Defendants shall establish and maintain financial security in the amount needed to complete the Work, in one or more of the following forms:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;
- d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or more Settling Defendants that such Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; and

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (I) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

Settling Defendant may invoke the dispute resolution procedures under Section XIX, below, to dispute an EPA determination under this Paragraph that Settling Defendants' Annual Reports do not demonstrate Settling Defendants' financial ability to complete the Work.

45. If at any time during the effective period of this Consent Decree, Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 44(e) and (f), such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

46. In the event that EPA determines at any time that a performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendants, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 44 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 48(b)(ii) of this Consent Decree. Settling Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this

Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms hereof.

47. The commencement of any Work Takeover pursuant to Paragraph 87 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 44(a), (b), (c), or (d), and at such time EPA shall have an immediate right to access resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 44(e), Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

48. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining Work has diminished, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 48(b)(2) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 46 or 48(b) of this Consent Decree.

b. Change of Form of Performance Guarantee.

(1) If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 48(b)(2) of this Consent Decree. In the event of a dispute under this subparagraph (b)(1), Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

(2) Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree. EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within twenty days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA in accordance with Paragraph 50 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action.

a. Within 21 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report(s) requesting certification to EPA for approval, with a copy (s) to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 60 days of EPA's approval of the inspection. In the report (s), a registered professional engineer and Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report (s) shall include as-

built drawings signed and stamped by a professional engineer. The report (s) shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspections and receipt and review of the written report (s), EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action, provided, however, that EPA may only require Settling Defendants 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 12.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

50. Completion of the Work.

a. Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including O&M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work 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 a Settling Defendant or Settling Defendants' Project Coordinator:

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

information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants 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 12.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants 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 XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendants in writing.

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work 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, Settling Defendants shall, subject to Paragraph 52, 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, Settling Defendants shall notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656, or, if such person or his/her delegatee is unavailable, the EPA Region 2 Emergency 24-hour Hot Line at (732) 548-8730. Settling Defendants 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 plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States 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 XXI (Covenant Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

53. Payments for Future Response Costs.

a. Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants billings for such costs. The billings will be accompanied by a printout of cost data from EPA's financial management system (*i.e.*, a SCORPIOS Report) and a brief narrative description of major cost items. Settling Defendants shall make all payments within thirty (30) days of the date of each bill requiring payment, except as otherwise provided in Paragraph 55. Settling Defendants shall make all payments of Future Response Costs via electronic funds transfer ("EFT"). Such payments shall be remitted via EFT to Federal Reserve Bank of New York, New York, as follows. Settling Defendants shall provide the following information to its bank:

- i. Amount of payment
- ii. Title of Federal Reserve Bank of New York account to receive the payment: EPA
- iii. Account code for Federal Reserve Bank of New York receiving the payment:
68010727
- iv. Federal Reserve Bank of New York ABA Routing Number: 021030004
- v. SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- vii. Name of Settling Defendants:
- viii. Case number:
- ix. Site/Spill identifier: 0280

Along with this information, Settling Defendants shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Federal Reserve Bank of New York. To ensure that Settling Defendants' payment is properly recorded, Settling Defendants shall send a letter or e-mail to the United States within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number, and Settling Defendants' name and address. Such letter shall be sent to the United States, and EPA and to the Cincinnati Finance Center, in accordance with Section XXVI (Notices and Submissions).

b. The total amount to be paid by Setting Defendants pursuant to Subparagraph 53.a. shall be deposited in the Solvent Savers Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

c. The United States on behalf of Settling Federal Agency shall pay 10.73 percent of response costs paid by Settling Defendants at the Site since December 31, 1997 and 7% of response costs paid by EPA in accordance with the following procedures:

- i. If Settling Defendants seek payment from the United States on behalf of Settling Federal Agency of response costs described in Paragraph 53.c. following the Effective Date, Settling Defendants shall make a written demand to the Environmental Defense Section for payment from Settling Federal Agency ("Federal Payment Demand") in

accordance with the notice provisions set forth in Paragraph 106 of this Consent Decree. The Federal Payment Demand shall include (1) the amount of payment requested from the United States on behalf of Settling Federal Agency; (2) the amount of response costs paid by Settling Defendants since December 31, 1997 or the most recent prior Federal Payment Demand; (3) an explanation of why the response costs are necessary and consistent with the NCP; (4) the amount of response costs paid by EPA since May 12, 2007 or the most recent prior Federal Payment Demand; and (5) supporting documentation sufficient to show for each contractor, vendor, or other person to whom money was paid by Settling Defendants, the amount paid and the services or goods provided. No more than one Federal Payment Demand shall be submitted in a calendar year.

- ii. If Settling Defendants comply with their obligations in Paragraph 53.c.i., the United States, on behalf of Settling Federal Agency, shall cause to be paid to the Solvent Savers (Lincklaen) Participation Fund 10.73% of response costs paid by the Settling Defendants that are consistent with the NCP and 7% of the response costs paid by EPA as soon as reasonably practicable after any Federal Payment Demand, less amounts withheld or disputed. Payment shall be made by electronic funds transfer pursuant to instructions to be provided by Settling Defendants.
 - iii. If Settling Federal Agency in good faith questions or contests any invoiced fees or expense, in whole or in part, it shall have the right to withhold payment of such disputed amount; provided, however, that Settling Federal Agency shall notify Settling Defendants in writing of any disputed amount within 30 days of the date of such Federal Payment Demand and shall promptly make a good faith effort to resolve such dispute. In the event that Settling Federal Agency and Settling Defendants cannot informally resolve the dispute, either Party may seek formal dispute resolution, in accordance with 5 U.S.C. § 571 *et seq.*, not less than 90 days after the date of the Federal Payment Demand. The invocation of dispute resolution procedures under this Paragraph 53.c. shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree.
 - iv. In the event that payment of response costs required by paragraph 53.c.i. is not made within 120 days of receipt of the Federal Payment Demand, interest on the unpaid amount shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after Settling Federal Agency's receipt of the Federal Payment Demand and accruing through the date of payment, and Settling Defendants may seek appropriate relief from the Court under Section XXVIII. (Retention of Jurisdiction) to compel such payment.
- d. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agency under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that Settling Federal Agency obligate or

pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. For purposes of this Paragraph, Settling Defendants shall not claim that any of the following constitutes an accounting error: (i) EPA's methodology for calculating indirect costs, as set forth at 65 Fed. Reg. 35341-35345 (June 2, 2000); (ii) DOJ's methodology for calculating indirect costs; (iii) any actual or provisional indirect cost rates which are set for EPA Region 2 by EPA's Office of the Comptroller (or similar office) based on the methodology referred to in clause (i); (iv) EPA's methodology for calculating contractor annual allocation costs; and (v) EPA's use of a provisional annual allocation rate for EPA contractor costs if no final annual allocation rate has been established for a given year and contractor at the time that EPA issues a bill for such contractor costs. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the sixty (60) days of receipt of the bill pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 53. Simultaneously, Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XXVI (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, Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the United States, in the manner described in Paragraph 53. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 53; 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 XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Paragraph 53 are not made within sixty (60) days of Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of 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 including, but

not limited to, payment of stipulated penalties pursuant to Paragraph 75. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.

XVII. INDEMNIFICATION AND INSURANCE

56. Settling Defendants' Indemnification of the United States

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States with the exception of Settling Federal Agency and its 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 Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendants agree to pay the United States with the exception of Settling Federal Agency all costs it incurs 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 based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraphs 56 and 57, and shall consult with Settling Defendants prior to settling such claim.

57. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. No later than fifteen (15) days before commencing any on-Site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 49.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of ten million dollars, combined single limit, and automobile liability insurance with limits of ten million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of

workers' compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA 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, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants 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.

60. 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, Settling Defendants 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 Emergency and Remedial Response Division, EPA Region 2, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter or such longer time as specified by EPA, Settling Defendants shall provide in writing to EPA 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; Settling Defendants' 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 Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants 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 Settling Defendants 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. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. If EPA 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 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 does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants 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 Settling Defendants complied with the requirements of Paragraphs 60 and 61, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and if applicable, the Court.

XIX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

64. 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.

65. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. 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 parties to the dispute.

b. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region 2, 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 66.a.

67. 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 Settling Defendants' Statement of Position submitted pursuant to Paragraph 65, the ERRD Director will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved

to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph N 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.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA 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 73. 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 Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

69.a. Notwithstanding any other provision of this Consent Decree, Settling Defendants may not invoke the dispute resolution procedures of this Consent Decree more than once regarding the same issue. Applicable principles of *res judicata* and collateral estoppel shall govern the determination of whether Settling Defendants are attempting to invoke the dispute resolution procedures of this Consent Decree with respect to an issue that is the same as an issue for which Settling Defendants previously invoked the dispute resolution procedures of this Consent Decree. For purposes of *res judicata* and collateral estoppel, as provided above, final resolution with respect to such an issue consists of any of the following: (i) an agreement between EPA and Settling Defendants; (ii) a final decision by the ERRD Director under subparagraph 66.b. or a statement of EPA's position by the ERRD Director under subparagraph 67.a. of this Consent Decree (provided that Settling Defendants do not seek judicial review of such final decision or the dispute in accordance with the requirements of this Consent Decree); (iii) or a decision by the Court.

b. Notwithstanding subparagraph a, above, in the event that, without Settling Defendants' agreement, EPA modifies or directs Settling Defendants to modify the resolution of any disputed issue that was resolved by agreement of the parties or by decision of the Regional Administrator or the ERRD Director, Settling Defendants may invoke dispute resolution under this Consent Decree with respect to that modification.

XX. STIPULATED PENALTIES

70. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 71 and 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure).

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

71. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 71.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 14th day
\$7,500	15th through 30th day
\$10,000	31st day and beyond

b. Compliance Milestones.

- (1) submission and, if necessary, revision and resubmission of any plan, report, or other deliverable required by Section VI (Performance of the Work by Settling Defendants) or by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;
- (2) any deadline imposed by the SOW or by any plan which is prepared pursuant to Section VI (Performance of the Work by Settling Defendants) or the SOW and approved by EPA;
- (3) obligations imposed by Section XV (Emergency Response);
- (4) obligations imposed by Section IX (Access and Institutional Controls);
- (5) performance of pre-remedial design activities and preparation of the Remedial Design in accordance with the ROD, the SOW, and this Consent Decree, including, but not limited to the RD Work Plan;
- (6) implementation of the Remedial Action in accordance with the ROD, the SOW, and this Consent Decree, including , but not limited to the RA Work Plan and any changes approved in writing by EPA;
- (7) modification of the SOW or related work plans pursuant to Paragraph 12, and implementation of the work called for by such modifications in accordance with the modified SOW or work plan;
- (8) implementation of O&M, including post-remediation monitoring in accordance with the ROD, the SOW and this Consent Decree;
- (9) performance of studies and investigations pursuant to Section VII (Remedy Review), and
- (10) any other requirement of this Consent Decree that applies to Settling Defendants and that is not identified in Paragraph 71.b.

72. Stipulated Penalty Amounts - Reports.

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in Subparagraph b. of this Paragraph:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 14th day
\$ 2,000	15th through 30th day
\$ 5,000	31st day and beyond

- b. Subparagraph a. of this Paragraph applies to the following requirements:

- (1) permitting split or duplicate samples, quality assurance, and other requirements pursuant to Section VIII (Quality Assurance, Sampling, and Data Analysis);

- (2) designation of Settling Defendants' Project Coordinator as required by Section XII (Project Coordinators);
- (3) obligations imposed by Section XIII (Assurance of Ability to Complete Work);
- (4) timely submission and, if necessary, revision and resubmission of the name, title and qualifications of the proposed Supervising Contractor pursuant to Section VI (Performance of the Work by Settling Defendants);
- (5) certification of completion requirements set forth in Section XIV (Certification of Completion), including both the requirement to make the certification and the requirement that the certification be truthful;
- (6) timely notification regarding any delay or anticipated delay, consistent with Paragraph 30;
- (7) indemnification and insurance requirements set forth in Section XVII (Indemnification and Insurance);
- (8) reporting requirements set forth in Section X (Reporting Requirements);
- (9) timely submission of written notification of any off-site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 14;
- (10) submission of documents and other information in accordance with Section XXIV (Access to Information), and
- (11) payments required by Section XVI (Payments for Response Costs).

73. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$750,000.

74. 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 thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region 2, under Paragraph 67.b. or 68.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the thirty-first (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.

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

76. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be made by EFT, consistent with the payment procedures set forth in Paragraph 53 above. Settling Defendants shall send a letter to the United States within one week of the EFT, which references the date of the EFT; the payment amount and that the payment is for stipulated penalties; the name of the Site; the case number; and Settling Defendant's name and address. Such letter shall be sent to the United States and EPA as provided in Section XXVI (Notices and Submissions).

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

78. Penalties shall continue to accrue as provided in Paragraph 74 during any dispute resolution period, but need not be paid until the following:

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

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

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

79. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 76.

80. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' 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, provided, however, that the United States 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.

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

82. a. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically

provided in Paragraphs 83, 84, and 86 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b. of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

b. In consideration of the payments that will be made by Settling Federal Agency to Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 83, 84, and 86 of this Section, EPA covenants not to take administrative action against Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b. of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Consent Decree. EPA's covenant extends only to Settling Federal Agency and does not extend to any other person.

83. 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, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agency

- 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:

- (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.

84. 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 and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agency

- 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:

- (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.

85. a. With respect to the groundwater component of the remedy selected in the September 29, 1990 Record of Decision, for purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of September 29, 1990, the date the September 29, 1990 Record of Decision containing the groundwater component was signed, and set forth in the September 29, 1990 Record of Decision for the Site and the administrative record supporting the September 29, 1990 Record of Decision, as well as that information and those conditions contained in the September 29, 2006 Amendment to the Record of Decision and the document entitled "Pre-Design Groundwater Investigation, Initial Groundwater Sampling Event (July 1994) Data Summary, Solvent Savers Site, Lincklaen, New York."

b. With respect to the soil component of the remedy selected in the September 29, 2006 Amendment to the Record of Decision, for purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of September 29, 2006, the date the September 29, 2006 Amendment to the Record of Decision containing the soil component was signed, and set forth in the September 29, 2006 Amendment to the Record of Decision for the Site and the administrative record supporting the September 29, 2006 Amendment to the Record of Decision.

c. For purposes of Paragraph 84, 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.

86. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agency with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants and Settling Federal Agency with respect to:

- a. claims based on a failure by Settling Defendants or Settling Federal Agency 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 Material outside of the Site;
- c. liability based upon Settling Defendants' and Settling Federal Agency's ownership or operation of the Site, or upon Settling Defendants' and Settling Federal Agency's transportation, treatment, storage, or disposal, or the 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 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 additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 12 (Modification of the SOW or Related Work Plans);
- h. liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs; or
- i. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

87. Work Takeover

(a) In the event EPA determines that Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of 10 days or such longer time as specified by EPA within which to remedy the circumstances giving rise to EPA's issuance of such notice.

(b) If, after expiration of the 10-day notice period specified in Paragraph 87(a), Settling Defendants have 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 as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 87(b).

(c) Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's implementation of a Work Takeover under Paragraph 87(b). However, notwithstanding Settling Defendants' 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 87(b) until the earlier of (i) the date that Settling Defendants remedy, 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 XIX (Dispute Resolution), Paragraph 66, 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, in accordance with the provisions of Paragraph 47 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Defendant(s) fail 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 47, any unreimbursed costs incurred by EPA in performing Work under

the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

89. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCY

90. a. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 91, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree (with the exception of a motion to enforce this Consent Decree against the United States on behalf of Settling Federal Agency), including, but not limited to:

1. 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;
 2. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
 3. any claims arising out of response actions at or in connection with the Site, including any claim under the United States 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 93 (Waiver of Claims Against De Micromis Parties), Paragraph 94 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 99 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 83, 84, 86 (b) - (d) or 86 (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 is seeking pursuant to the applicable reservation.

Nothing in this paragraph 90 shall be construed to preclude the claims asserted by Settling Defendant General Electric Company in *General Electric Co. v. Johnson* (D.D.C.), Civ. No. 1:00 CV02855 (JDB), including any appeals from the District Court's decisions in that case.

b. Covenant by Settling Federal Agency. Settling Federal Agency hereby agrees not to assert 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 with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

91. 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 Settling Defendants' plans or activities. The foregoing applies only to claims, (a) 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 and (b) contribution claims against Settling Federal Agency in the event any claim is asserted by the United States against Settling Defendants under the authority of or under Paragraphs 83, 84, 86(b)-(d) or 86(g)-(i) of Section XXII (Covenant Not to Sue by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

92. 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).

93. 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 the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

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

b. any materials contributed by such person to the Site 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 the Site, 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 the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendants.

94. 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 the Site, including for contribution, against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site as of the Effective Date.

XXIII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

95. Except as provided in Paragraph 93 (Waiver of Claims Against De Micromis Parties) and Paragraph 94 (Waiver of Claims Against *De Minimis* 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 93 (Waiver of Claims Against De Micromis Parties) and Paragraph 94 (Waiver of Claims Against *De Minimis* 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 the Site against any person not a Party hereto.

96. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants and Settling Federal Agency 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 purposes of the preceding sentence, the "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs, and the Work as defined herein.

97. 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 in writing no later than sixty (60) days prior to the initiation of such suit or claim.

98. 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 within ten (10) days of service of the Complaint on them. In addition, Settling Defendants shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

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

XXIV. ACCESS TO INFORMATION

100. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site 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 the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

101. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff 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, 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 or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. 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 Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff 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.

102. 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 the Site.

XXV. RETENTION OF RECORDS

103. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b. of Section XIV (Certification of Completion of the Work), each Settling Defendants shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) 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, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

104. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. 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 Settling Defendants assert such a privilege, they shall provide the Plaintiff 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 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.

105. Each Settling 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 (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site 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. The United States acknowledges that Settling Federal Agency is (1) subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified 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).

XXVI. NOTICES AND SUBMISSIONS

106. 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, Settling Federal Agency, and Settling Defendants, respectively.

As to the United States or EPA:

Seven (7) copies of initial submissions of all work plans, design documents, and reports, two copies of all final work plans, design documents and reports, and one (1) copy of all other written communications shall be sent to:

Chief, Central New York Remediation Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866
Attention: Solvent Savers Site Remedial Project Manager

One copy of all written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Attention: Solvent Savers Site Attorney

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # _____
Attention: Solvent Savers DOJ Attorney

Chief, Environmental Defense Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington D.C. 20026-3986
Re: DJ # 90-11-3-741
Attention: Solvent Savers Defense Attorney

and

Notices required under Section XVI. shall also be sent to the following address:

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Cincinnati Finance Center, MS: NWD
Cincinnati, Ohio 45268

The number of copies of submissions to EPA may be reduced by the submission of plans, design documents, reports and data in electronic form. Upon request by EPA Settling Defendants may submit in electronic form all portions of any report or other deliverable. Settling Defendants are required to submit pursuant to the provisions of this Consent Decree provided that such submissions are in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. An electronic submission of a plan, design document or report must be accompanied by at least one hard copy of the plan, design document or report.

As to the State:

When submitting to EPA any written communication required hereunder, Settling Defendants shall simultaneously submit two copies of that communication (unless the given document is a plan or report, in which case six (6) copies shall be submitted) to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233
Attention: Solvent Savers Superfund Site Project Manager

As to Settling Defendants:

Michael Miller
de maximis, inc.
450 Montbrook Lane
Knoxville, TN 37919

Reed Neuman, Esq.
NOSSAMAN LLP/O'CONNOR & HANNAN
1666 K Street, NW, Suite 500
Washington, DC 20006

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

108. This Court retains jurisdiction over both the subject matter of this Consent Decree and 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 XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

109. The following appendices are attached to and incorporated into this Consent Decree:
“Appendix A” is the ROD and Amended ROD.
“Appendix B” is the SOW
“Appendix C” is the description and/or map of the Site.
“Appendix D” is the draft Easement.

XXX. COMMUNITY RELATIONS

110. Settling Defendants shall propose to EPA their participation in the Community Relations Plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, 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 to explain activities at or relating to the Site.

XXXI. MODIFICATION

111. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendants. All such modifications shall be made in writing.

112. Material modifications to this Consent Decree (other than to the SOW) shall be in writing, signed by the Parties, and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree (other than to the SOW) shall be in writing and shall be effective when signed by the Parties.

113. Except as provided in Paragraph 12 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Settling Defendants.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIII. SIGNATORIES/SERVICE

117. Each undersigned representative of a Settling Defendant to this Consent Decree 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.

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

119. 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.

XXXIV. FINAL JUDGMENT

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

121. 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 and 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 _____, 20____.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bristol-Myers Squibb Company, et. al., relating to the Solvent Savers Site.

FOR THE UNITED STATES OF AMERICA

1/26/09

Date

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington D.C. 20530

1/27/09

Date

Rachel A. Hankey
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

1/28/09

Date

Angeline Purdy
Environmental Defense Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bristol-Myers Squibb Company, et al., relating to the Solvent Savers Site.

9/30/08

Date

George Pavlou, Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency,
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bristol-Myers Squibb Company, et al., relating to the Solvent Savers Site.

FOR BRISTOL-MYERS SQUIBB COMPANY

September 16, 2008
Date

Signature:
Name (print): *DAVID J. MARLOW*
Title: *VP FINANCE*
Address:

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

Name (print): *REED W. NEUMAN*
Title: *COUNSEL*
Address: *NORAMAN LLP / O'CONNELL & HANNAN
1666 K STREET, N.W.
WASHINGTON, D.C. 20006*
Ph. Number: *202-887-1480*

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bristol-Myers Squibb Company, et al., relating to the Solvent Savers Site.

FOR GENERAL ELECTRIC COMPANY

Sept 17, 2008

Date

Signature:

Name (print): Tom H. Hill
Title: Senior Executive Counsel
Address: 3135 Easton Turnpike
Fairfield, CT 06828

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

Name (print): Ignacia S. Moreno
Title: Counsel, NE/MW Regions & International
Address: 319 Great Oaks Blvd.
Albany, NY 12203

Ph. Number: (518) 862-2714

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bristol-Myers Squibb Company, et al., relating to the Solvent Savers Site.

FOR INTERNATIONAL BUSINESS MACHINES CORP.

Sept. 15, 2008

Date

Signature: _____

Name (print): Edan T. Dionne

Title: Director, Corporate Environmental Affairs

Address: 294 Route 100

Somers, NY 10589

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

Name (print): Louise Novak

Title: none

Address: 1 New Orchard Road

Armonk, NY 10504

Ph. Number: 1-914-499-4841

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bristol-Myers Squibb Company, et al., relating to the Solvent Savers Site.

FOR PASS & SEYMOUR, INC.

9/18/08
Date

Signature

Name (print): Kose Abba
Title: Vice President Finance
Address: Pass & Seymour, Inc
50 Boyd Ave
Syracuse, NY 13221

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

Name (print): J. Eric Charlton
Title: Attorney
Address: Hiscock & Barclay, LLP
One Park Place
300 South State Street
Ph. Number: Syracuse, NY 13202-2078
315-425-2716