

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEW ORLEANS; CFI INDUSTRIES, INC.,  
formerly doing business as Letellier Phillips Paper  
Company; DELTA BY-PRODUCTS, INC.;  
EDWARD LEVY METALS, INC,

Defendants.

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Civil Action No. 02-3618  
Section "A"  
Magistrate 3

**CONSENT DECREE**

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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 Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), against, inter alia, Delta By-Products, Inc. ("Delta") and Edward Levy Metals, Inc. ("Levy"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Agriculture Street Landfill Superfund Site in New Orleans, LA ("the Site").

B. Defendant City of New Orleans filed a third-party complaint against Delta and Levy, under CERCLA, alleging that Delta and Levy are liable in contribution for response costs.

C. On May 19, 2003, this Court "closed" all proceedings against Levy due to then pending Bankruptcy proceedings. On September 1, 2003, the Bankruptcy Court of the Eastern District of Louisiana "closed" all proceedings against Levy. (See PACER Docket, Case No. 03-12595).

D. In entering into this Consent Decree, Delta and Levy (collectively "Settling Defendants") do not admit any liability to Plaintiff or any other party arising out of the transactions or occurrences alleged in the complaint.

E. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are unable to make a cash payment toward Past

Response Costs incurred in connection with the Site.

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

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

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. 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 is binding upon the United States, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings

assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "Delta" shall mean Delta By-Products, Inc.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "Fair Market Value " shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Defendant's mortgage on the

Property at the time of the transfer.

i. "Financial Information" shall mean those financial documents identified in Appendix A.

j. "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.

k. "Levy " shall mean Edward Levy Metals, Inc.

l. "Net Sales Proceeds " shall mean the total value of all consideration received by Delta for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) less i) the balance of Delta's mortgage on the Property, ii) closing costs limited to those reasonably incurred and actually paid by Delta associated with the Transfer of the Property, and iii) federal and state taxes owed on the proceeds. Delta shall provide EPA and the State with documentation sufficient to show the total value of all consideration received by Delta for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items i) through iii) above. This documentation shall include, but not be limited to, the report of an appraisal paid for by Delta, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation shall also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a

schedule showing all outstanding indebtedness on the Property.

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

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

o. "Past Response Costs" shall mean all costs, including, but not limited to direct and indirect costs that EPA or DOJ on behalf of EPA has paid at or in connection with response actions for the Site through the date of lodging of this Consent Decree, plus accrued interest on all such costs.

p. "Plaintiff" shall mean the United States.

q. "Property" shall mean that portion of the Site that is owned by Delta. The Property, partially owned by Delta, is located in New Orleans, Orleans Parish, Louisiana, and is designated by the following property description: "Square No. 1809, Third District, bounded by Agriculture, Port, Abundance, Almonaster Avenue (late Lafayette) and the Right of Way of the N.O. & N.E.R.R."

r. "Remedy" shall mean the removal actions that were completed between October 1998 and January 2000, including the property being cleared of vegetation, covered with a geotextile filter fabric, capped with one foot of soil, graded, compacted, and re-vegetated.

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

t. "Settling Defendants" shall mean Delta By-Products, Inc. ("Delta") and Edward Levy Metals, Inc. ("Levy").

u. "Site" shall mean the Agriculture Street Landfill Site located in Orleans Parish,

City of New Orleans. The approximately 95-acre Site is bordered by Higgins Boulevard on the north, the above-grade railroad rights-of-way on the south and west, and the cul-de-sac at the southern end of Clouet Street, near the railroad tracks, to Higgins Boulevard between Press and Montegut streets on the east.

v. "Transfer" shall mean each sale, assignment, transfer or exchange by Delta (or its successors or heirs) of the Property, or any portion thereof, or of an entity owning the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property; i) is transferred and Fair Market Value is received in consideration, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure. A Transfer does not include a transfer pursuant to an inheritance or a bequest.

w. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objectives of the Parties are to partially reimburse the United States of Response Costs, to protect and maintain the remedy at Delta's property, and for Delta and Levy to resolve their alleged liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section XI, and subject to the Reservations of Rights by United States in Section XII.

#### **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

5. The geotextile liner is covered by 12 inches of clean soil and a vegetative



cover on Delta's property. The vegetative cover is to prevent the erosion of the soil cap. The soil cap and geotextile liner covering the Site and Delta's property could be breached or degraded by excavation within the Site or by the failure to maintain the vegetative cover over the soil cap. Delta will not create any impediment on its property or act in any manner which may adversely affect the soil cap, geotextile liner, and vegetative cover on the property.

#### **VII. ACCESS AND INSTITUTIONAL CONTROLS**

6. If the property where access and/or land/water use restrictions are needed to implement response activities at the Site, is owned or controlled by Delta, Delta shall:

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

- (1) Monitoring, investigation, removal, remedial or other activities at the Property;
- (2) Verifying any data or information submitted to the United States or the State;
- (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) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section

XV Access to Information;

(7) Assessing Settling Defendant's compliance with this Consent Decree;

and

(8) 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 property in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedy performed or to be performed at the Site. Such restrictions include, but are not limited to disturbances to the surface or subsurface of the Site, including filling, drilling, excavation or construction on the Site, that is unrelated to the remedy measures implemented at the Site, unless such excavation is consistent with the Technical Abstract for Utilities attached hereto as Appendix B; and

c. execute and record in the Registrar of Conveyances Office, Orleans Parish, State of Louisiana, 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 6.a. of this Consent Decree, and (ii) grants the right to enforce the land use restrictions listed in Paragraph 6.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 remedy completed for the Site. Delta shall grant the access rights and the rights to enforce the land use restrictions to the United States, on behalf of EPA, and its representatives, and (iii) the State and its representatives.

7. Delta shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

a. a draft easement, in substantially the form attached hereto as Appendix C, that is enforceable under the laws of the State of Louisiana, and

b. 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 Defendant is unable to obtain release or subordination of such prior liens or encumbrances). Within 15 days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendant 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 Registrar of Conveyances Office, Orleans Parish, State of Louisiana. Within 30 days of recording the easement, such Settling Defendant 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. If the easement is to be conveyed to the United States, 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. § 3111.

8. Notwithstanding any provision of this Consent Decree, the United States retain 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, and any other applicable

statute or regulations.

### **VIII. PAYMENT OF RESPONSE COSTS**

9. Payment of Proceeds of Sale of Property. Delta agrees that it will not sell, assign, transfer or exchange the Property except by means of a Transfer.

a. Delta shall pay to EPA 85% of the Net Sales Proceeds of the Transfer of the Property. Payment shall be made to EPA within 30 days of the effective date of the Transfer of the Property.

b. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 06D7, DOJ Case Number 90-11-3-1638/2, and the civil action number. Settling

Defendants shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency - Region VI  
Attention: Superfund Accounting  
P.O. Box 360582M  
Pittsburgh, PA 15251

c. At least 30 days prior to any such Transfer, Delta shall notify EPA of the proposed transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer. Delta shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the

conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

d. In the event of a Transfer of the Property or any portion thereof, Delta shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and Settling Defendants modify this Consent Decree in writing. Nothing in this Paragraph obligates Settling Defendant to Transfer the Property or a portion thereof.

10. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Louisiana following lodging of the Consent Decree.

11. At the time of payment, Delta shall also send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 06D7, DOJ case number 90-11-3-1638/2, and the civil action number.

12. The total amount to be paid pursuant to Paragraph 9 shall be deposited in the EPA Hazardous Substance Superfund.

#### **IX. FAILURE TO COMPLY WITH CONSENT DECREE**

13. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 9 (Payment of Proceeds of Sale of Property) by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

14. Stipulated Penalty.

a. If any amounts due under Paragraph 9 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$1,000 per day that such payment is late.

15. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 5:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$300	31st day and beyond

b. Compliance Milestones.

The compliance milestones include the deadlines for compliance set forth in Paragraphs 6-7.

c. Defendant's failure to comply with the requirements of Paragraph 5 shall result in a stipulated penalty of \$100 per day per violation per day of noncompliance after written notice by EPA and a grace period of 30 days to correct the noncompliance.

16. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/

Spill ID Number 06D7, DOJ Case Number 90-11-3-1638/2, and the civil action number.

Settling Defendants shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency - Region VI  
Attention: Superfund Accounting  
P.O. Box 360582M  
Pittsburgh, PA 15251

17. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 06D7, DOJ Case Number 90-11-3-1638/2, and the civil action number.

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

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

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

21. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have

accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VIII or from performance of any other requirements of this Consent Decree.

**X. NOTICE OF FEDERAL LIEN**

22. EPA shall file a Notice of Federal Lien in the Registrar of Conveyances Office, Orleans Parish, State of Louisiana.

23. Within sixty (60) days after closing occurs on the sale of the portion of the Site owned by Delta, EPA shall file a Release of Notice of Federal Lien in the Registrar of Conveyances Office, Orleans Parish, State of Louisiana. The Release of Notice of Federal Lien shall release the Notice of Federal Lien and shall not release any other lien or encumbrance which may exist upon the Site.

**XI. COVENANT NOT TO SUE BY PLAINTIFF**

24. Covenant Not to Sue Settling Defendants by United States. Except as specifically provided in Section XII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon execution and recordation in the Registrar of Conveyances Office, the easement described herein at Section VII(6)(c), submission of the evidence of title described herein at Section VII(6)(c), and any amount due under Section IX (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.



**XII. RESERVATIONS OF RIGHTS BY UNITED STATES**

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

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability;
- e. liability based upon Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

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

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

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

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, 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; or

c. any claim against the United States, including any department, agency or instrumentality of the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

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

28. Settling Defendants agree not to assert any claims for Past Response Costs and to waive and dismiss all claims or causes of action that they may have relating to Past Response Costs, including for contribution, against any other person. This waiver shall not apply with respect to any defenses, claims or causes of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to Past Response Costs against such Settling Defendants and that claim is not otherwise barred by the effect of this settlement.

#### **XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

29. Except as provided in Paragraph 28, 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. Except as provided in Paragraph 28, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

30. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

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

#### **XV. ACCESS TO INFORMATION**

32. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, correspondence, or other documents or information related to the Site.

33. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records 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). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records 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 records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are

privileged.

34. No claim of confidentiality shall be made with respect to any data, including but not limited to any other documents or information evidencing conditions at or around the Site.

#### **XVI. RETENTION OF RECORDS**

35. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

36. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon requests by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records

created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

37. Settling Defendants 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, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States 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 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

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

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the 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 regarding the Site and Settling Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

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

**XVII. NOTICES AND SUBMISSIONS**

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

As to the United States:

DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-1638/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

EPA:

Joseph E. Compton, III  
Assistant Regional Counsel  
Office of Regional Counsel  
U. S. Environmental Protection Agency Region VI  
1445 Ross Avenue  
Dallas, TX 75202-2733

Settling Defendants:

Lawrence G. Pugh, III  
Shannon C. Ruddy  
Pugh, Accardo, Haas & Radecker, LLC  
1100 Poydras Street  
Suite 2000  
New Orleans, LA 70163

**XVIII. RETENTION OF JURISDICTION**

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

**XIX. INTEGRATION**

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

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

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

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

**XXI. SIGNATORIES/SERVICE**

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



document.

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

46. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of 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.

**XXII. FINAL JUDGMENT**

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

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

\_\_\_\_\_  
Hon. Jay C. Zainey  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. City of New Orleans, et al*, Civil Action No. 02-3618, relating to the Agriculture Street Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

United States Department of Justice

Date:

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JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

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JEFFREY M. PRIETO  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-7915  
(202) 514-8395 (fax)

JAMES LETTEN  
U.S. Attorney  
ENEID FRANCIS  
Assistant U.S. Attorney  
Eastern District of Louisiana

EPA

Date: 19 June 2009

SAMUEL COLEMAN, P.E.  
Director  
Superfund Division  
JOSEPH E. COMPTON, III  
Assistant Regional Counsel  
Office of Regional Counsel  
U. S. Environmental Protection Agency Region VI  
1445 Ross Avenue  
Dallas, TX 75202-2733

THE UNDERSIGNED PARTY enter into this Consent Decree in the matter of *United States v. City of New Orleans, et al, Civil Action No. 02-3618*, relating to the Agriculture Street Landfill Superfund Site.

FOR DEFENDANT Delta By-Products, Inc.

Date: 5/19/09

Edith L. Rosenblum, President

Date: 5/19/09

\_\_\_\_\_  
Edward Levy, Jr., M.D., Secretary

FOR DEFENDANT Edward Levy Metals:

Date: 5/19/09

\_\_\_\_\_  
Paul Rosenblum, President

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

Kein Weiss  
McGlinchey, Stafford PLLC  
12<sup>th</sup> Floor  
601 Poydras Street  
New Orleans, LA

**CERTIFICATE OF SERVICE**

I hereby certify service of the Notice of Lodging of Consent Decree, unless otherwise noted, on this 16<sup>th</sup> day of July, 2009:

PARTY	ATTORNEY-IN-CHARGE
Attorneys for City of New Orleans	Evelyn F. Pugh CITY OF NEW ORLEANS 1300 Perdido Street Room 5E03 New Orleans, LA 70112 (Via Facsimile, 504-658-9868)  Benjamin F. Wilson Anthony Michaels BEVERAGE & DIAMOND, P.C. 1350 I Streets NW, Suite 700 Washington, D.C. 20005 (Via Facsimile, 202-789-6190)
Attorneys for Delta By-Products, Inc. and Edward Levy Metals, Inc.	Lawrence G. Pugh III PUGH, ACCARDO, HAAS & RADECKER, L.L.C. Energy Centre 1100 Poydras Street, Suite 2000 New Orleans, LA 70163-2000 (Via Facsimile, 504-799-4520)
Attorney for Board of Commissioners of the Port of New Orleans	Jeffrey Mark Lynch BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS Port of New Orleans 1350 Port of New Orleans Place P.O. Box 60046 New Orleans, Louisiana 70130 (Via Facsimile, 504-528-3209)

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Jeffrey M. Prieto  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division

Date: July 16, 2009