

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

Civil No. 08-6240 (ADM/JJK)

UNITED STATES OF AMERICA,

Plaintiff,

v.

FMC CORPORATION and BAE SYSTEMS  
LAND & ARMAMENTS, LP,

Defendants.

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CONSENT DECREE

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## I. BACKGROUND

A. The Naval Industrial Reserve Ordnance Plant ("NIROP") in Fridley, Minnesota commenced operations in the early 1940s, as a government-owned, contractor-operated facility producing ordnance hardware and equipment for the Department of the Navy ("Navy").

B. Since at least 1982, in response to releases and/or threatened releases of a hazardous substance(s) at or from the NIROP Site, the Navy has conducted Response Actions, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq., and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the United States Environmental Protection Agency ("EPA") placed the NIROP Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on November 21, 1989, 54 Fed. Reg. 48184. (See definition of "NIROP Site" in Section IV below.)

D. The Navy intends to continue performing Response Actions at the NIROP Site under, inter alia, CERCLA and the Defense Environmental Restoration Program ("DERP") Amendments, 10 U.S.C. §§ 2701 to 2710. EPA participates in the Response Actions under CERCLA pursuant to the Federal Facilities Agreement for the NIROP Site among the Navy, the State of Minnesota Pollution Control Agency ("MPCA") and the EPA, Region 5, effective March 1991. The "Federal Facilities Agreement" is defined in Section IV, below.

E. Remedial investigation reports and other evaluations of the NIROP Site have identified several sources of contamination, including buried waste, leaking pipes or equipment, and process area spills and upsets. As a result, on September 28, 1990, a Record of Decision (“ROD”) for groundwater remediation (Operable Unit (“OU”) 1), and on September 17, 2003, a ROD for soil remediation (OU 2 and OU 3) were jointly signed by the Navy, MPCA, and EPA.

F. The United States of America ("United States"), on behalf of the Navy and the EPA, filed a complaint in this matter against FMC Corporation, ("FMC"), a Delaware corporation, and BAE Systems Land & Armaments LP ("BAE Systems"), a limited partnership (all collectively, the "Parties"), pursuant to Sections 107 and 113 (g)(2) of CERCLA, 42 U.S.C. §§ 9607 and 9613(g)(2) (the "Complaint") seeking recovery of Response Costs (defined in Section IV, below) incurred and to be incurred by the Navy and EPA with regard to the NIROP Site.

G. The United States alleges that, during the time FMC and its predecessors operated the NIROP, FMC and its predecessors disposed of, discharged, deposited, dumped, spilled, leaked, or placed lubricants, waste oils, paint sludges, chlorinated solvents, including trichloroethylene (“TCE”), and other chemical wastes into or on the land and water such that hazardous substances were released into the environment and emitted into the air or discharged into surface waters and groundwaters. The United States alleges that these releases of hazardous substances to the environment by FMC and its predecessors violated Federal, State, or local laws or sound industrial practice thereby supporting the unallowability of certain costs under FMC’s and BAE Systems’

(the “Settling Defendants”) Federal Contracts (defined in Section IV, below).

The Settling Defendants allege that all such releases were conducted in conformance with generally accepted standard business practices in effect at the time the releases took place, thereby supporting the allowability of costs incurred by the Settling Defendants in connection with such releases.

H. If required to answer the Complaint, the Settling Defendants would: (1) assert counterclaims against the Navy for contribution under CERCLA and the common law, and for recoupment; and (2) interpose various affirmative defenses, including the defense that the CERCLA statute of limitations bars any claim by the United States against the Settling Defendants.

I. The United States and Settling Defendants have agreed to the entry of this Consent Decree (defined in Section IV, below) prior to the taking of any testimony and without admission of liability or fault as to any allegation or other matter arising out of the transactions or occurrences alleged in the Complaint or in any actual or potential claim, cross-claim, third-party claim, fourth-party claim or other cause of action that has been or could be asserted by the Parties to this Consent Decree or any third-party.

J. The NIROP has been a contractor-operated facility from 1941 to present. The NIROP included the northernmost portion of a 36-acre main manufacturing building, the land underlying that portion of the building, and the land to the north of the building (“NIROP Real Property”), as described and depicted in the Quitclaim Deed attached at Appendix A and the Conceptual Map attached at Appendix B). The Navy owned the building from 1941 until 2004,

and a substantial portion of the equipment in the building during all or a portion of the time period from 1941 to 2004. FMC's predecessor, Northern Pump, owned the land until 1947, when the Navy purchased the land underlying the building and the land to the north of the building. In 2004, the Navy sold the NIROP Real Property to United Defense, LP ("UDLP"), which in turn conveyed it to BAE Systems in 2005 as part of an acquisition of UDLP by BAE Systems. The NIROP Real Property is currently owned by ELT Minneapolis, LLP ("ELT"), and a portion is operated by BAE Systems under a leaseback arrangement with ELT.

K. The June 17, 2004 Quitclaim Deed (attached as Appendix A) that transferred ownership of the NIROP Real Property to UDLP contained certain covenants, conditions, restrictions, and agreements between the United States and UDLP that relate to the matters addressed under this Consent Decree. Unless expressly stated in this Consent Decree, this Consent Decree is not intended to modify the rights and obligations of the parties under that Quitclaim Deed.

L. In or about 1964, FMC acquired certain assets of the Northern Pump Co., and FMC assumed the operation of the NIROP for the Navy. FMC continued to operate the NIROP until 1994.

M. In or about 1994, FMC and Harsco Corporation ("Harsco") formed UDLP, which operated the NIROP until 1997.

N. In or about October 1997, FMC and Harsco sold UDLP to an entity of the Carlyle Group, at which time FMC and Harsco withdrew as UDLP partners and were replaced by newly-formed UDLP partnership entities, United Defense

Industries, Inc. ("UDI, Inc.") and UDLP Holdings Corporation. UDLP continued to operate on the NIROP Real Property until 2004.

O. Pursuant to an Agreement and Plan of Merger, BAE Systems acquired UDI, Inc., and therefore UDLP in 2005, and has operated on the NIROP Real Property to the present date.

P. The NIROP Site is adjacent to the FMC Superfund Site. The FMC Superfund Site was placed on the National Priorities List in 1982, and has been and continues to be the subject of response actions, overseen by EPA and MPCA since approximately 1980, to address soil and groundwater contamination under both CERCLA and analogous State law. This includes contamination that has migrated beyond the former FMC plant boundaries.

Q. Three parcels of land are referenced in this Consent Decree: (1) the NIROP Real Property; (2) the "Intermediate Site," a parcel immediately to the south of the NIROP; and (3) the "South Site," a parcel immediately south of the Intermediate Site. These parcels are depicted in the attached Appendix B. The FMC Superfund Site is comprised of the South Site.

R. In settlement of litigation before the U.S. District Court for the District of Minnesota, FMC Corporation v. Northern Pump Co., et al., File No. 4-84 Civil 1365 (D. Minn.), the United States and FMC executed a September 20, 1988 agreement that addressed the parties' liabilities to each other for costs incurred or to be incurred by FMC (or its successor) to respond to releases "at, in, on, or beneath" the Intermediate Site and the South Site (the "Minnesota District Court Settlement"). In addition, certain contractual matters relating to the

South Site were resolved by FMC and the United States in a settlement agreement dated December 3, 1987, entered into in connection with the Appeal of FMC Corporation, Northern Ordnance Division, under Contract No. DAAA08-81-C-0119, ASBCA 30379, an appeal before the Armed Services Board of Contract Appeals, (the "ASBCA Settlement"). This Consent Decree does not modify the terms of the Minnesota District Court Settlement or the ASBCA Settlement.

S. EPA and the Navy notified the State of Minnesota (the "State") of the negotiations with the Settling Defendants leading to this Consent Decree.

T. BAE Systems and the United States have entered into an Advance Agreement under FAR 31.209 determining the allowability and allocability of its costs paid to the United States under this Consent Decree that are not defined as Consent Decree Unallowed Costs (defined in Section IV, below).

U. The United States and Settling Defendants recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and that implementation of this Consent Decree will expedite the cleanup of the NIROP Site, resolve the claims which are or could have been asserted by and between the Parties as provided herein, and avoid prolonged and complicated litigation. The Court further finds that this Consent Decree is fair, reasonable, and consistent with the purposes of CERCLA and in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:



## II. JURISDICTION

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b). The Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this 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, the Settling Defendants, and their respective successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the responsibilities of the 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 or in any appendix attached hereto, the following definitions shall apply:

a. "Advance Agreement" shall mean the agreement entered into between BAE Systems and the Administrative Contracting Officer ("ACO") pursuant to the Federal Acquisition Regulations ("FAR"), 48 C.F.R §

31.109, dated June 17, 2008. The Advance Agreement implements the settlement agreement reached by the Parties to the Consent Decree concerning the allowability and allocability of attorney fees and other costs which are subject to the provisions of FAR 31.205-47 and also addresses previously recovered costs related to this Consent Decree.

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

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

d. "Consent Decree Unallowed Costs" shall mean the first \$850,000.00 paid by the Settling Defendants for Response Costs pursuant to Section V of this Consent Decree.

e. "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 day that is not a Saturday, Sunday, or Federal holiday.

f. "DERP Amendments" shall mean the Defense Environmental Restoration Program Amendments, 10 U.S.C. §§ 2701 to 2710, originally enacted as Section 211 of the Superfund Amendments and Reauthorization Act of 1986.

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

h. "Effective Date" shall mean the date of entry of this Decree by the Court, as specified in Section XIX, below.

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

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

k. "ER,N Account" shall mean the Environmental Restoration, Navy Account, into which the Navy's site cleanup appropriation is received from Congress and which also been authorized by Congress, pursuant to 10 U.S.C. §2703(e), to receive funds recovered by the Navy under CERCLA.

l. "Federal Contract," for purposes of compliance with Section VI (Settling Defendants' Warranties Against Recovery of Certain Costs) of this Consent Decree, shall mean any prime or subcontract or agreement by a Settling Defendant with a department, agency, or instrumentality of the United States, including (but not limited to) contract vehicles to facilitate foreign military sales, fixed price contracts, and cost reimbursement contracts.

m. "Federal Facilities Agreement" shall mean the agreement among the Navy, the State of Minnesota Pollution Control Agency

("MPCA") and the EPA, Region 5, for implementation of Response Actions at the NIROP Site, effective March 1991, executed pursuant to Section 120(e) of CERCLA, 42 U.S.C. 9620(e).

n. "Intermediate Site" shall mean the land, buildings and equipment located on the property identified as "Lot 2" on Appendix B. The Intermediate Site was formerly owned by BAE Systems, FMC, and their predecessors, and a portion of it is currently operated by BAE Systems.

o. "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.

p. "Navy" shall mean the Department of the Navy and any component thereof or any successor departments, agencies or instrumentalities of the United States.

q. "NIROP Contamination" shall mean:

i. any hazardous substances present or existing in the environment on or under the NIROP Real Property as of the date of lodging of this Consent Decree that originated at the NIROP Real Property, including any such hazardous substances that migrated from the NIROP Real Property to other areas of the NIROP Site prior to the date of lodging of the Consent Decree; and

ii. any hazardous substances at the NIROP Site, described in Subparagraph i, above, that migrated from the NIROP Real Property after the date of lodging of this Consent Decree.

r. "NIROP Real Property" shall mean the land, buildings and equipment located on the property identified as "Lot 1" on Appendix B.

s. "NIROP Site" shall mean the NIROP Real Property and all contaminated groundwater that has migrated from the NIROP Real Property.

t. "Other Costs" shall mean the payments made by the Settling Defendants pursuant to Section V of this Consent Decree less that amount designated as "Consent Decree Unallowed Costs."

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

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

w. "Plaintiff" shall mean the United States.

x. "Response Actions" shall mean all past, present and future response, remedial, or removal actions, including enforcement actions, addressing the release or threatened release of hazardous substances at or from the NIROP Site pursuant to CERCLA, the DERP Amendments, or any other provisions of law, including but not limited to: (i) any removal actions under CERCLA; (ii) any investigations, studies or other activities related to any

remedial investigation and feasibility study (“RI/FS”) under CERCLA; (iii) any remedial design and remedial action (“RD/RA”) under CERCLA; (iv) any long-term operation and maintenance (“O&M”) for the NIROP Site under CERCLA; and (v) any oversight activities related to any past, present, or future response, remedial, or removal actions at the NIROP Site under CERCLA.

y. “Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that the Navy, EPA, or DOJ on behalf of EPA and/or the Navy, have paid or will pay for Response Actions, as defined in Paragraph x.

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

aa. “Settling Defendants” shall mean FMC Corporation, BAE Systems Land & Armaments LP, and their successors to the extent that the successors’ liability is derived from the acts or omissions of the Northern Pump Company, Northern Ordnance, Inc., FMC Corporation, United Defense LP or BAE Systems Land & Armaments LP.

bb. “South Site” shall mean the 13 acres of land, buildings and equipment located on the property identified as “Lot 3” and the 5-acre parcel identified as the “BNR” lands on Appendix B. The South Site was formerly owned by FMC and its predecessors and, except for the BNR lands, is currently owned and operated by BAE Systems.

cc. "State" shall mean the government of the State of Minnesota and any successors and assigns, and any department, division, agency, office or other subdivision thereof, including, but not limited to, MPCA.

dd. "Third-Party Reimbursement" shall mean any payment Settling Defendants receive from any persons or entities other than the United States, whether through insurance, contract, or other claims for reimbursement of the costs Settling Defendants pay to the United States under Section V of this Consent Decree.

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

V. PAYMENT OF RESPONSE COSTS

4. Payments for Response Costs. Within 30 days of the Effective Date of this Consent Decree, Settling Defendants shall pay to the ER,N Account \$4,140,000 in payment for the Navy's Response Costs. Within 30 days of the Effective Date of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$460,000, in payment for EPA's Response Costs. Payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the Site and DOJ Case Numbers 90-11-3-07002 for payments to the ER,N Account, and 90-11-3-07002/1 for payments to the EPA. The total amount to be paid by Settling Defendants to EPA pursuant to this Paragraph shall be deposited in the NIROP 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 NIROP Site, or to be

transferred by EPA to the EPA Hazardous Substance Superfund. Payments shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Minnesota following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

5. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to the Navy, and to the EPA, in accordance with Section XV (Notices and Submissions).

6. In the event that any payment required under this Section is not made within 30 days of the Effective Date, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Response Costs under this Paragraph shall begin to accrue on the Effective Date. 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 the United States by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section VII (Failure to Comply with Consent Decree). Settling Defendants shall make all applicable Interest payments required by this Paragraph in the manner provided in this Section V (Payment of Response Costs).



VI. SETTLING DEFENDANTS' WARRANTIES AGAINST RECOVERY OF CERTAIN COSTS

7. The Parties agree that the \$850,000 Consent Decree Unallowed Costs paid by Settling Defendants under Section V of this Consent Decree shall be designated as unallowed costs under any Federal Contracts and shall not be charged by Settling Defendants under any Federal Contracts. In addition, and in accordance with FAR 31-205.47(c), the United States and BAE Systems have reached an agreement to deal with attorneys' fees and related costs incurred by the Contractors relating to this proceeding. FMC shall not charge any attorneys' fees and related costs related to this proceeding under any Federal Contract. BAE Systems has incurred and subsequently charged attorneys' fees and related costs in their overhead under Federal Contracts for prior years. Further, BAE Systems acknowledges that attorney fees and related costs continued to be incurred after July 2007. The United States and BAE Systems have reached agreement on the costs for attorney's fees and related costs connected with this proceeding that are allowable under FAR Part 31 and those costs which will not be considered allowable. The details of this agreement are set forth in the Advance Agreement pursuant to FAR, 48 C.F.R. § 31, dated June 17, 2008.

8. Subject to the penalties of the False Claims Act, 31 U.S.C. § 3729 et seq., and other applicable law, Settling Defendants hereby certify to the United States that they shall not seek, charge or receive reimbursement from the United States of any Consent Decree Unallowed Costs under any Federal Contract.

9. The United States and BAE Systems also recognize that certain environmental costs related to this proceeding were included and recovered by BAE Systems from the United States in its pricing of Federal Contracts in prior accounting periods. The United States and BAE Systems have estimated such prior recoveries and agreed that BAE Systems has received a benefit from the inclusion of those costs in the pricing of its Federal Contracts in these prior periods. Accordingly, in order to insure that BAE Systems does not receive double recovery of any Other Costs, the United States and BAE Systems have agreed to resolve the issue of previously recovered costs by providing for an accounting of such prior recovered costs as set forth in the Advance Agreement pursuant to FAR, 48 C.F.R. § 31.

10. Each Settling Defendant certifies that, to the best of its knowledge and belief, it has not received Third-Party Reimbursement of any costs paid under this Consent Decree.

a. In the event that any Settling Defendant received or receives any Third-Party Reimbursement for any costs paid to the United States pursuant to Section V of this Consent Decree, such payment shall be considered reimbursement for such Settling Defendant's Other Costs. Settling Defendants shall not realize a double recovery, i.e., duplicative payment, additional payment, or additional reimbursement, with regard to any Other Costs. Therefore, subject to the penalties of the False Claims Act, 31 U.S.C. § 3729 et seq., and other applicable law, each Settling Defendant hereby individually certifies to the United States that it shall not seek or accept in the future under any Federal Contract,

reimbursement from the United States of any Other Costs under this Consent Decree for which such Settling Defendant received or receives a Third-Party Reimbursement.

b. In the event any Settling Defendant receives Third-Party Reimbursement for any costs paid under Section V of this Consent Decree for which such Settling Defendant has previously received payment from the United States pursuant to any Federal Contract, such Settling Defendant shall repay to the United States any previous such payment(s) for costs paid by the United States to the Settling Defendant, together with interest thereon from the date that the United States made such payment(s) to the Settling Defendant, computed pursuant to the interest rates provided in 41 U.S.C. § 611.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

11. Stipulated Penalty.

a. If any amounts payable under Section V (Payment of Response Costs) to the Navy are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to the Navy, as a stipulated penalty, in addition to the Interest required by Section V (Payment of Response Costs), \$1,000 per day for each day that such payment is late. If any amounts payable under Section V (Payment of Response Costs) to the EPA are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to the EPA, as a stipulated penalty, in addition to the Interest required by Section V

(Payment of Response Costs), \$1,000 per day for each day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the Navy or EPA. All payments to the Navy under this Paragraph shall be identified as "Stipulated Penalties" and shall be made by certified or cashier's check and submitted to the United States in accordance with instructions provided in the United States' demand for payment. All payments to the 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." In either case, the check, or a letter accompanying the check, shall reference the name and address of the Party making payment, the NIROP Site name, the case name and civil action number, the EPA Site Spill ID Number 05FD, the DOJ Case Number 90-11-3-07002, for payments to the Navy, and 90-11-3-07002/1, for payments to the EPA Hazardous Substance Superfund. Settling Defendants shall send the EPA payment to the following:

EPA Hazardous Substance Superfund  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Any Stipulated Penalty amounts in excess of \$10,000 pursuant to this Section VII (Failure to Comply With Consent Decree) shall be paid by EFT as set forth in Section V (Payment of Response Costs).

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to the United States, the Navy and EPA in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Site/Spill ID Number 05FD, DOJ Case Numbers 90-11-3-07002 and 90-11-3-07002/1, and the civil action number.

d. Stipulated Penalties shall accrue as provided in this Paragraph regardless of whether the Navy or EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon written demand. All Stipulated 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.

12. Payment of Stipulated Penalties shall not excuse Settling Defendants from any payment required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

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

14. If the Settling Defendants fail to comply with this Consent Decree, including but not limited to failure to make any payment required by Section V (Payment of Response Costs), and the United States then 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, reasonable costs of attorney time.

15. 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. Neither waiver of nor payment of Stipulated Penalties shall excuse Settling Defendants from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

#### VIII. COVENANTS NOT TO SUE BY UNITED STATES

16. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States, on behalf of the Navy and EPA, covenants not to sue or to take administrative action against Settling Defendants, [Northern Pump Company](#), or [Northern Ordnance, Inc.](#), pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, to compel performance of any Response Actions, or to recover any Response Costs, relating to the NIROP Site. These covenants not to sue shall take effect upon receipt by the Navy and EPA of all payments required by Section V (Payment of Response Costs) and/or, if such payments are not timely made, upon receipt by the Navy and EPA of all amounts due under Section V (Payment of Response Costs) and Section VII (Failure to Comply with Consent Decree). 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, [Northern Pump Company](#), and [Northern Ordnance, Inc.](#) and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY UNITED STATES

17. 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 Covenants Not to Sue by the United States in Section VIII (Covenants Not To Sue By United States).

Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to the following:

a. claims against either or both Settling Defendants based on a failure by such Settling Defendant(s) to comply with a requirement of this Consent Decree;

b. claims for recovery from either or both Settling Defendants of the incremental Response Costs incurred by the United States for exacerbation of NIROP Contamination at the NIROP Site that the United States establishes: (i) either (A) adds hazardous substances to the NIROP Contamination, (B) changes groundwater flow direction, mobility, or volume, or (C) impedes Response Action implementation; and also (ii) results from either: (A) any construction, demolition, or excavation performed by such Settling Defendant(s) at the NIROP Real Property after the date of lodging of this Consent Decree, or (B) any affirmative act of disposal of hazardous substances by such Settling Defendant(s) at the NIROP Real Property after the date of lodging of this Consent Decree;

c. claims for recovery of the incremental Response Costs that the United States establishes: (i) were incurred by the United States after the date of lodging of this Consent Decree in responding to releases at the NIROP Site that originated at least in part from the Intermediate Site or South Site, and also (ii) are in addition to the costs the United States would otherwise have incurred in responding to releases originating solely at or from the NIROP Site;

d. liability of either or both Settling Defendants for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for any release or threat of release of hazardous substances described in Subparagraph 17(b) or 17(c) of this Paragraph that may present an imminent and substantial endangerment to the public health or welfare or the environment; provided, however, that (i) no such Section 106 order shall require a Settling Defendant to undertake a Response Action beyond the boundaries of the Intermediate Site to address trichloroethylene contamination emanating from the Intermediate Site; and (ii) the Parties shall by agreement, or if injunctive relief is granted, by judicial order, allocate the Response Action in accordance with their respective equitable contributions to the releases described in Subparagraphs 17(b) and 17(c) of this Paragraph. Any such Response Action shall account for Matters Addressed in Paragraph 24 of this Consent Decree;

e. liability of either or both Settling Defendants for injunctive relief for any violation by such Settling Defendant(s) of any land use



control requirements in Section A of the Quitclaim Deed, attached as Appendix A;

f. criminal liability;

g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

h. any claims brought by any third party against the United States that seeks compensatory monetary damages (and not abatement or injunctive relief) in connection with the NIROP Site including, but not limited to, any and all rights, defenses, claims, counterclaims, cross-claims, and/or causes of action; and

i. any claim by a Settling Defendant against the United States for any matter(s) that the Settling Defendant contends is reserved pursuant to Section X (Covenant Not To Sue and Reservations of Rights by Settling Defendants) of this Consent Decree.

18. Except with regard to the Matters Addressed in the covenant not to sue in Section VIII (Covenants Not To Sue by United States) of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, as against Settling Defendants, any and all rights, defenses, claims, counterclaims, cross-claims and/or causes of action in the United States Court of Federal Claims or any successor Court or before the Armed Services Board of Contract Appeals or any successor Board, based on or dependent upon any rights or obligations created in any Federal Contract and/or Federal Contract

modification entered into by Settling Defendants on the one hand, and the United States on the other hand.

X. COVENANTS NOT TO SUE AND RESERVATIONS OF RIGHTS BY  
SETTLING DEFENDANTS

19. Covenants Not to Sue. Subject to the reservations of rights in Paragraphs 20 and 21 of this Section X (Covenants Not To Sue and Reservations of Rights by Settling Defendants), 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 the NIROP Site or this Consent Decree, including but not limited to:

a. any direct or indirect claims 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 claims arising out of the Response Actions at the NIROP Site for which Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Minnesota, 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;

c. any claims against the United States, including any department, agency or instrumentality of the United States, pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the NIROP Site;  
or

d. any claims against the United States, arising under Federal Contracts between the United States and Settling Defendants that might otherwise be available to Settling Defendants in connection with Matters Addressed in this Consent Decree (defined in Paragraph 24, below), including but not limited to, any claim, action and demand for equitable adjustment, attorneys' fees, compensatory damages and exemplary damages.

The Settling Defendants warrant and represent that no other action or suit with respect to such any claims that are subject to this covenant not to sue is pending or will be filed or submitted by them to any other court, administrative agency or legislative body. Settling Defendants further warrant and represent that they have made no assignment of or transfer of all or any part of their rights that are subject to this covenant not to sue.

20. Reservation of Rights. The Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Covenants Not to Sue by the Settling Defendants in Paragraph 19 of this Section X (Covenants Not To Sue and Reservations of Rights by Settling Defendants). Notwithstanding any other provision of this Consent Decree, the Settling Defendants reserve all rights against the United States with respect to:

a. any claim by the United States against any Settling Defendant for any matter(s) that the United States contends is reserved pursuant to Section IX (Reservations of Rights by United States) of this Consent Decree;

b. any claim against any Settling Defendant by any third party in connection with the NIROP Site or this Consent Decree;

c. any and all 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 or her 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; provided however, that (i) 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 the Navy's or EPA's selection of response actions or the oversight or approval of any Settling Defendant's plans or activities; and (ii) the foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and

d. with respect to any matters reserved under this Paragraph, any and all rights, defenses, claims, counterclaims, cross-claims and/or causes of action arising in tort under applicable federal, state, or local law.

21. Except with regard to the Matters Addressed (defined in Paragraph 24, below) in the covenant not to sue in Paragraph 19 of this Section X (Covenants Not To Sue and Reservations of Rights by Settling Defendants) of this Consent Decree, the Settling Defendants reserve, and this Consent Decree is without prejudice to, as against the United States, any and all rights, defenses, claims, counterclaims, cross-claims and/or causes of action in the United States Court of Federal Claims or any successor Court or before the Armed Services Board of Contract Appeals or any successor Board, based on or dependent upon any rights or obligations created in any Federal Contract and/or Federal Contract modification entered into by Settling Defendants on the one hand, and the United States on the other hand.

22. 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).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to cost recovery or 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 NIROP Site against any person not a Party hereto.

24. 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), or as may be otherwise provided by law, for "Matters Addressed" in this Consent Decree. The "Matters Addressed" in this Consent Decree are the "Response Actions" and "Response Costs" relating to the NIROP Site, except for matters reserved under Paragraph 17.

25. The Settling Defendants agree that, with respect to any suit or claim for contribution brought by either or both of them for matters related to this Consent Decree, they will notify the United States, the Navy and EPA in writing no later than 60 days prior to the initiation of such suit or claim.

26. The Settling Defendants also agree that, with respect to any suit or claim for contribution brought against either or both of them, for matters related to this Consent Decree, they will notify the United States, the Navy and EPA in writing within 10 days of service of the complaint or claim upon them. In addition, each Settling Defendant shall notify the United States, the Navy and EPA within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. The Settling Defendants certify that they do not have insurance coverage against which they can assert a claim for CERCLA Response Costs at the NIROP Site and that no residual insurance proceeds exist from which any such Response Costs could be paid.

28. 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 NIROP Site, Settling Defendants, individually or jointly, 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 shall affect the scope of enforceability of the Covenants Not to Sue by United States set forth in Section VIII (Covenants Not to Sue by United States).

## XII. SITE ACCESS

29. If the NIROP Site, or any other property where access is needed to implement response activities at the NIROP Site, is owned or controlled by a Settling Defendant, such Settling Defendant shall, commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including the Navy, EPA, and their contractors, with access at all reasonable times to the NIROP Site, or to such other property as may be necessary for the purpose of conducting any response activity related to the NIROP Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other response activities at the NIROP Site;
- b. Verifying any data or information submitted to the United States;

- c. Conducting investigations relating to contamination at or near the NIROP Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the NIROP Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants, or its agents or contractors, consistent with Section XII (Access to Information);
- g. Assessing Settling Defendants' compliance with this Agreement; and
- h. Activities described in the Quitclaim Deed, attached as Appendix A, in Paragraphs A.4 ("Non Interference Restriction") and B.3 ("Access").

Notwithstanding any provision of this Agreement, the Navy and EPA retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

### XIII. ACCESS TO INFORMATION

30. Settling Defendants shall provide to the Navy or 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, not previously provided to the Navy or EPA, relating to activities at the NIROP Site that could reasonably be expected to adversely affect the condition of any



environmental medium at the NIROP Site, or adversely affect the Response Actions or the land use controls at the NIROP Site, including, but not limited to, sampling; analysis; chain of custody records; manifests; trucking logs; receipts; reports; sample traffic routing; and plans to make substantial modifications of or substantial expansions to the facility in areas located on portions of the NIROP Site and that are subject to land use controls.

31. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to the Navy or EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by the United States 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 the United States, or if the United States 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, that fall into the categories listed in Paragraph 30 of this Consent Decree, 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 the United States 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 to only a portion of a record, the record shall be provided to the Navy or EPA in redacted form to mask the privileged information only. Notwithstanding any claim of privilege, Settling Defendants shall retain all records that they claim to be privileged in accordance with Section XIV (Retention of Records). The United States may dispute any privilege claim by a Settling Defendant. If the parties cannot agree, the dispute may be submitted to the Court for resolution. No records created or generated pursuant to the requirements of this or any other settlement with the United States pertaining to the NIROP Site shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality or privilege 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 NIROP Site.

#### XIV. RETENTION OF RECORDS

33. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all non-identical copies of records now in their possession or control, or which come into their possession or control, that relate in any manner to Response Actions taken at the NIROP Site or the liability

of any person under CERCLA with respect to the NIROP Site, regardless of any corporate retention policy to the contrary.

34. After the conclusion of the 10-year document retention period in the preceding Paragraph, Settling Defendants shall notify the Navy, EPA, and DOJ at least 90 days prior to the destruction of any such records; and, upon request by the Navy, EPA, or DOJ, Settling Defendants shall deliver any such records to the Navy, EPA, or DOJ, as appropriate. 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 the Navy, EPA or DOJ with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

35. Each Settling Defendant hereby certifies 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 (other than identical copies) relating to its potential liability regarding the NIROP Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the NIROP Site by the United States or the State 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), and Section 3007 of RCRA, 42 U.S.C. § 6972.

#### XV. NOTICES AND SUBMISSIONS

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

##### As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ #90-11-3-07002)  
Washington, D.C. 20044-7611  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611

Courier Address:  
ENRD, Room 2121  
601 D Street, N.W.

Washington, D.C. 20004  
Re: DJ#90-11-3-07002/1

##### As to the Navy:

Perry H. Sobel  
Assistant Director & Program Manager (Affirmative Environmental Restoration Claims)  
Navy Office of General Counsel Litigation Office  
720 Kennon Street, SE  
Bldg. 36, Rm. 233  
Washington Navy Yard, DC 20374-5013

As to the EPA:

Timothy Thurlow  
Associate Regional Counsel  
Office of Regional Counsel, C-14J  
U.S. Environmental Protection Agency-Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

As to Settling Defendants:

FMC:

General Counsel  
FMC Corporation  
1735 Market St.  
Philadelphia, PA 19103

BAE Systems:

Vice President and General Counsel  
BAE Systems Land and Armaments, LP  
1101 Wilson Boulevard, Suite 2000  
Arlington, VA 22209-6168

XVI. RETENTION OF JURISDICTION

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

XVII. INTEGRATION/APPENDICES

38. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a copy of the Quitclaim Deed between

the United States and UDLP for transfer of ownership of the NIROP facility, executed on June 15, 2004. "Appendix B" is a map identifying the NIROP Real Property ("Lot 1"), the Intermediate Site ("Lot 2") and the South Site ("Lot 3" and the "BNR Lands").

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

39. This Consent Decree shall be lodged with the Court for a period of not less than fifteen (15) 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.

40. 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.

XIX. EFFECTIVE DATE

41. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XX. SIGNATORIES/SERVICE

42. Each undersigned representative of a Party to this Consent Decree and the Assistant Attorney General (or Acting 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.

43. The 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.

44. The 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 the Settling Defendants with respect to all matters arising under or relating to this Consent Decree. The 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. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the United States withdraws its consent pursuant to Paragraph 39, above, or the Court expressly declines to enter this Consent Decree.

XXI. FINAL JUDGMENT

45. 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 \_\_\_\_\_, 2008.

\_\_\_\_\_  
United States District Judge



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corp., et al., (D. Minn.), relating to the NIROP Fridley Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: 11/30/08

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RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

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FRANCIS J. BIROS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

FRANK J. MAGILL, JR.  
United States Attorney  
District of Minnesota

December 3, 2008

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FRIEDRICH A.P. SIEKERT  
Assistant United States Attorney  
  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corp., et al., (D. Minn.), relating to the NIROP Fridley Superfund Site.

FOR THE UNITED STATES DEPARTMENT  
OF THE NAVY:

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DONALD SCHREGARDUS  
Deputy Assistant Secretary of the Navy  
(Environment)  
U.S. Department of the Navy  
1000 Navy Pentagon  
Washington, DC 20350-1000

For the Department of the Navy Office of  
General Counsel:

FRANK R. JIMENEZ  
General Counsel

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PERRY H. SOBEL  
Assistant Director and Program Manager  
(Affirmative Environmental Response Claims)  
U.S. Department of Navy  
Office of General Counsel  
Navy Litigation Office  
720 Kennon Street, SE  
Bldg. 36, Rm. 233  
Washington, DC 20374-5013

-----  
STEPHANIE CATES-HARMAN  
Assistant Director  
U.S. Department of Navy  
Office of General Counsel  
Navy Litigation Office  
720 Kennon Street, SE  
Bldg. 36, Rm. 233  
Washington, DC 20374-5013

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corp., et al., (D. Minn.), relating to the NIROP Fridley Superfund Site.

FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY:

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RICHARD C. KARL  
Director, Superfund Division  
U.S. EPA-Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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TIMOTHY THURLOW  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA- Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corp., et al., (D. Minn.), relating to the NIROP Fridley Superfund Site.

FOR DEFENDANT FMC CORPORATION:

Date: 11/13/08

-----  
General Counsel  
FMC Corporation  
1735 Market St.  
Philadelphia, PA 19103

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

Name: CT Corporation

Title:

Address: 1515 Market Street

Philadelphia, PA 19102

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. FMC Corp., et al., (D. Minn.), relating to the NIROP Fridley Superfund Site.

FOR DEFENDANT BAE SYSTEMS LAND &  
ARMAMENTS LP:

Date: Oct. 31, 2008

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\_\_\_\_\_  
Vice President and General Counsel  
BAE Systems Land and Armaments, LP  
1101 Wilson Boulevard, Suite 2000  
Arlington, VA 22209-6168

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

Name: Mark Barker

Title: Vice President, General Counsel

Address: 1101 Wilson Boulevard, Suite 2000

Arlington, VA 22209-2444