

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA)
)
)
 Plaintiff,)
)
 v.) CASE NO. 98-1203-Civ.-T-25F
)
)
 STAUFFER MANAGEMENT COMPANY LLC,)
 (successor by merger to)
 Atkemix Thirty-Seven, Inc.))
)
 Defendant.)
)

AMENDED CONSENT DECREE

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FINAL RD/RA AMENDED CONSENT DECREE
FOR THE STAUFFER CHEMICAL SUPERFUND SITE

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 STAUFFER MANAGEMENT COMPANY LLC,)
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AMENDED CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), simultaneously filed a Complaint and lodged a proposed Consent Decree in this matter on June 10, 1998, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607 against Atkemix Thirty-Seven Inc. ("Atkemix") which at that time owned the Stauffer Chemical Superfund Site in Tampa, Hillsborough County, Florida ("the Site").

B. The proposed Consent Decree resolved the claims of the United States in its Complaint wherein it sought reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Site, together with accrued interest; and performance of response work by Atkemix at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). EPA notified the State of Florida ("State") and the relevant federal natural resource trustees of the negotiation of the Consent Decree and invited them to participate in such negotiations. The Consent Decree was entered by this Court on July 23, 1998.

C. The decision by EPA on the remedial action to be implemented at the Site, at the time of the Consent Decree entry, was embodied in a Record of Decision ("1995 ROD"), executed on December 1, 1995, on which the State gave its concurrence. The 1995 ROD included a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

D. Subsequent to 1995 ROD issuance, and in accordance with Section 9.4 of the 1995 ROD, EPA conducted a pilot study that indicated that bioremediation would be effective in addressing the on-site soil and sediment contamination.

E. Atkemix merged into Stauffer Management Company LLC ("SMC ") in December 2000, and SMC has succeeded by merger to the environmental liabilities of Atkemix at the Site and under the Consent Decree entered by this Court on July 23, 1998. Neither Atkemix nor SMC admits any liability to the United States arising out of the transactions or occurrences alleged in the Complaint, nor has either acknowledged that any release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. SMC has been performing the Work required by the 1995 ROD, and the groundwater pump and treat system continues to work effectively. However, the 1995 ROD remedy for soils and sediments has failed to achieve the Performance Standards in a timely manner and has thus far been ineffective in meeting the goal of Site clean up. EPA and the State concurred that the 1995 ROD remedy for the soils and sediment should be changed to an alternative remedy whereby SMC would install a containment cell for placement of the contaminated soils and pond sediments on-site, and SMC would place a cap on the contaminated soils and sediments. A similar remedy had been set forth in the 1995 ROD,

as Alternative 3S, one of the feasible remedial actions which would also achieve Performance Standards.

G. Pursuant to Section 117 of CERCLA, 42 U.S.C. Section 9617, EPA published a proposed plan setting forth the provisions of an amendment to the 1995 ROD and held a public meeting on March 2, 2006 to present the Remedy Modification Proposal to the public and answer questions. EPA provided an opportunity for written and oral comments from the public on the proposed plan to amend the 1995 ROD, and responded to all questions by and comments of the public, both orally at the public meeting and through a responsiveness summary (Appendix B of 2006 ROD). A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Superfund Management Division Director based the selection of the response action.

H. EPA executed the Amended Record of Decision on August 28, 2006 ("2006 ROD") which modified the Work to be performed for the remediation of the soils and sediments at the Site. Under the 2006 ROD, SMC will excavate contaminated surface and subsurface soils, and pond sediments and place them in a containment cell; install a two (2) foot thick pervious soil cap and impervious geosynthetic cap over surface soil, and place a

one foot thick layer of clean fill in ponds to reduce ecological risk. SMC will also ensure institutional controls to limit the use of the property.

I. EPA has prepared a Statement of Work ("2006 SOW") which details the manner in which the 2006 ROD will be implemented.

J. SMC will continue to implement the groundwater remedy pursuant to the 1995 ROD and 1995 SOW.

K. The 1995 ROD sets forth the response action for the groundwater contamination at the Site, and the 2006 ROD sets forth the response action as regards soils and sediments at the Site.

L. It is necessary to amend the Consent Decree entered by this Court on July 23, 1998 to include the Work to be performed under the 2006 ROD and 2006 SOW.

M. Based on the information presently available to EPA, EPA believes that the Work under the 1995 ROD and 1995 SOW and the 2006 ROD and 2006 SOW will be properly and promptly conducted by SMC if conducted in accordance with the requirements of this Amended Consent Decree and its Appendices.

N. EPA provided the State with notice of the terms of the 2006 ROD and the State had given its concurrence.

O. Solely for the purposes of Section 113(j) of CERCLA, the Work selected by EPA in the 1995 ROD and the 2006 ROD, to be performed by SMC shall constitute a response action taken or ordered by the President.

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

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SMC. Solely for the purposes of this Amended Consent Decree and the underlying Complaint, SMC waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. SMC shall not challenge

the terms of this Amended Consent Decree or this Court's jurisdiction to enter and enforce this Amended Consent Decree.

III. PARTIES BOUND

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

3. SMC shall provide a copy of this Amended Consent Decree to each contractor hired to perform the Work (as defined below) required by this Amended Consent Decree and to each person representing SMC with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Amended Consent Decree. SMC or its contractors shall provide written notice of the Amended Consent Decree to all subcontractors hired to perform any portion of the Work required by this Amended Consent Decree. SMC shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Amended Consent Decree. With regard to the activities undertaken pursuant to this Amended

Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with SMC within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

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

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Amended 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.

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

"FDEP" shall mean the Florida Department of Environmental Protection and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Amended Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Amended Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV, and Paragraph 84 of Section XXI.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund

established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

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

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plans described in the 1995 SOW, as regards the groundwater treatment remedy, and described in the 2006 SOW, as regards the soils and sediments remedy, as those plans have been approved or developed by EPA pursuant to this Amended Consent Decree, and the 1995 SOW and 2006 SOW.

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

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States paid at or in connection with the site through July 23, 1998.

"Parties" shall mean the United States and SMC.

"Performance Standards" shall mean the cleanup standards and remediation goals and objectives set forth in Sections 7.1 and 9.1.2 of and related tables in the 1995 ROD and Section 8.0 through 8.2 of and related tables in the 2006 ROD.

"Plaintiff" shall mean the United States.

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

"1995 Record of Decision" or "1995 ROD" shall mean the EPA 1995 Record of Decision relating to the Site signed on December 1, 1995, by the Regional Administrator, EPA Region 4, or his delegate, and all attachments thereto. The 1995 ROD is attached as Appendix A.

"2006 ROD" shall mean the document entitled, "Amended Record of Decision Stauffer Chemical Site, Tampa, Hillsborough County, Florida," also referred to as "AROD," which was signed on August 10, 2006 by the Superfund Management Division Director, EPA Region 4, and all attachments thereto. The 2006 ROD is attached hereto as Appendix B.

"Remedial Action" shall mean those activities, except for Operation and Maintenance ("O&M"), to be undertaken by SMC to implement the 1995 ROD in accordance with the 1995 SOW, as

regards the groundwater remedy, and those activities, except for O&M, to be undertaken by SMC to implement the 2006 ROD in accordance with the 2006 SOW, as regards the soils and sediments remedy.

"Remedial Action Work Plan for 1995 ROD and SOW" shall mean the document prepared by SMC and approved by EPA in order to implement the remedy for the groundwater pump and treat system, and any amendments thereto.

"Remedial Action Work Plan for 2006 ROD and SOW" shall mean the document to be developed pursuant to Paragraphs 12 (a) and (b) of the Amended Consent Decree in order to implement the modified remedy for soils and sediments, and any amendments thereto.

"Remedial Design" shall mean the final plans and specifications already approved by EPA and implemented by SMC pursuant to the 1995 ROD in accordance with the 1995 SOW relative to the groundwater remedy.

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

"Site" shall mean the Stauffer Chemical Superfund Site, encompassing approximately forty (40) acres, located at 2009

Orient Road in Tampa, Hillsborough County, Florida and depicted generally on the map included in the 1995 ROD and the 2006 ROD.

"State" shall mean the State of Florida.

"1995 Statement of Work" or "1995 SOW" shall mean the statement of work for implementation of the Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix C to this Amended Consent Decree and any modifications made in accordance with this Amended Consent Decree.

"2006 SOW" shall mean the document entitled, "Statement of Work for Soils and Sediments, 2006 Amended Record of Decision," issued by EPA outlining the Work intended to fully implement the Site remedy as described in the 2006 ROD. The 2006 SOW is attached hereto as Appendix D.

"Supervising Contractor" shall mean the principal contractor retained by SMC to supervise and direct the implementation of the Work under this Amended Consent Decree.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of

RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under applicable State law.

"Work" shall mean all activities SMC is required to perform under this Amended Consent Decree, except those required by Section XXV. (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Amended Consent Decree are to protect public health or welfare or the environment at the Site by the implementation of response actions at the Site by SMC, to reimburse response costs of the United States, and to resolve the claims of the United States against SMC as provided in this Amended Consent Decree.

6. Commitments by SMC

SMC shall finance and perform the Work in accordance with this Amended Consent Decree, the 1995 ROD and 1995 SOW, the 2006 ROD and 2006 SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by SMC and approved by EPA pursuant to this Amended Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by SMC pursuant to this Amended Consent Decree shall be performed in accordance with the

requirements of all applicable federal and state laws and regulations. SMC must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the 1995 ROD and the 1995 SOW and the 2006 ROD and the 2006 SOW. The activities conducted pursuant to this Amended Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

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

a. SMC may seek relief under the provisions of Section XVIII (Force Majeure) of this Amended Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

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

9. Notice of Obligations to Successors-in-Title

a. Within forty-five (45) days after the entry of this Amended Consent Decree, SMC shall record a certified copy of this Amended Consent Decree or notice of the entry of this Amended Consent Decree with the Clerk of the Circuit Court, Hillsborough County, State of Florida. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Amended Consent Decree and shall reference the recorded location of the Amended Consent Decree and any restrictions applicable to the property under this Amended Consent Decree.

b. The obligations of SMC with respect to the provision of access under Section IX (Access) and the implementation of institutional controls under Section IX shall be binding upon SMC and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within forty-five (45) days after the entry of this Amended Consent Decree, SMC shall record with the

Clerk of the Circuit Court for Hillsborough County, Florida, a notice of obligation to provide access under Section IX (Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. SMC and any Successor-in-Title shall, at least forty-five (45) days prior to the conveyance of any such interest, give written notice of this Amended Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Amended Consent Decree was given to the grantee. In the event of any such conveyance, SMC's obligations under this Amended Consent Decree, including its obligations to provide or secure access pursuant to Section IX, shall continue to be met by SMC. In addition, if the United States approves, the grantee may perform some or all of the Work under this Amended Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of SMC to comply with the Amended Consent Decree.

VI. PERFORMANCE OF THE WORK BY SMC

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by SMC pursuant to Sections VI (Performance of the Work by SMC), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Amended Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within ten (10) days after the lodging of this Amended Consent Decree, SMC shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, SMC proposes to change a Supervising Contractor, SMC shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Amended Consent Decree.

b. If EPA approves or disapproves a proposed Supervising Contractor, EPA will notify SMC in writing. SMC shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to

them within 45 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and a written authorization to proceed with respect to any of the other contractors. SMC may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within forty-five (45) days of EPA's authorization to proceed.

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

11. Remedial Design.

SMC has already completed the Remedial Design pursuant to the 1995 ROD and 1995 SOW.

12. Remedial Action.

a. SMC has been implementing the Remedial Action Work Plan for 1995 ROD and SOW since the entry of the Amended Consent Decree on July 23, 1998, and will continue to implement that Plan as it pertains to the groundwater treatment remedy for the

Site. However, SMC is also required, pursuant to the 2006 ROD and 2006 SOW, to prepare and submit, within forty-five (45) days after entry of the Amended Consent Decree, a Remedial Action Work Plan for 2006 ROD pertaining to the modified remedy for soils and sediments. Upon its approval by EPA, the Remedial Action Work Plan for 2006 ROD shall be incorporated into and become enforceable under this Amended Consent Decree. At the same time as it submits the Remedial Action Work Plan for 2006 ROD and SOW, SMC shall submit to EPA and the State a Health and Safety Plan, for anticipated field activities, which conforms with the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120

b. The Remedial Action Work Plan for the 2006 ROD and SOW shall include the following: (1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the

Contingency Plan; (8) tentative formulation of the Remedial Action team; (9) construction quality control plan (by supervising contractor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan for the 2006 ROD and SOW also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendant's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan for the 2006 ROD and SOW by EPA, after a reasonable opportunity for review and comment by the State, SMC shall implement the activities required under the Remedial Action Work Plan for the 2006 ROD & SOW. SMC shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, SMC shall not commence physical Remedial Action

activities at the Site prior to approval of the Remedial Action Work Plan.

13. SMC shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved, and for so long thereafter as is otherwise required under this Amended Consent Decree.

14. Modification of 1995 SOW and/or 2006 SOW or Related Work Plans.

a. EPA has already determined that the Work specified under the 1995 ROD failed to achieve Performance Standards as regards the soils and sediments, and has executed the 2006 ROD to modify the remedy for soils and sediments at the Site. However, the modified remedy set forth under the 2006 ROD is consistent with the scope of the remedy set forth in the 1995 ROD. If EPA further determines that modification to the Work specified under either the 1995 SOW or 2006 SOW is necessary to achieve and maintain the effectiveness of the remedy set forth in either the 1995 ROD, as regards the groundwater treatment remedy, or the 2006 ROD, as regards the soils and sediments remedy, then EPA may require that such modification be incorporated in the 1995 SOW and/or 2006 SOW and/or related work plans. Provided, however, that a modification may only be

required pursuant to this paragraph to the extent that it is consistent with the scope of the remedy selected in the 1995 ROD, as regards the groundwater treatment remedy, or the 2006 ROD, as regards the soils and sediments remedy.

b. For purposes of Paragraph 14 and Paragraphs 49 and 50 only, the "scope of the remedy selected in the 1995 ROD" is: treatment of contaminated groundwater with activated carbon to meet surface water discharge standards or discharge to a POTW and, if warranted, discharge of treated groundwater to on-site ponds or Tampa Bypass Canal under a NPDES permit; and implementation of legal controls to restrict use of the Site groundwater pursuant to the Declaration of Restrictive Covenant (Appendix E to Amended Consent Decree). For purposes of Paragraph 14, and Paragraph 49 and 50 only, the "scope of the remedy selected in the 2006 ROD" is: construction of a containment cell; removal of contaminated surface soils up to a depth of two feet and placement of those surface soils in the containment cell; removal of all contaminated pond sediments to a one foot depth and placement of those pond sediments in the containment cell; removal of dense non-aqueous phase contaminated subsurface soils and placement of those soils in the containment cell; installation of a two-foot thick pervious

soil cap and impervious geosynthetic cap over contaminated surface soil; placement of a one-foot thick layer of clean fill in the north and south ponds to reduce ecological risk; and implementation of legal controls to restrict use of the Site soils and sediments pursuant to the Declaration of Restrictive Covenant (Appendix E to Amended Consent Decree).

c. If SMC objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The 1995 SOW and 2006 SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. SMC shall implement any work required by any modifications incorporated in the 1995 SOW and/or 2006 SOW and/or in work plans developed pursuant to the 1995 SOW and/or 2006 SOW in accordance with this Paragraph.

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

15. SMC acknowledges and agrees that nothing in this Amended Consent Decree, the 1995 ROD, the 1995 SOW, the 2006 ROD, or the 2006 SOW, or any related work plans, constitutes a

warranty or representation of any kind by the United States that compliance with the Work requirements set forth in the 1995 SOW or the 2006 SOW or related work plans will achieve the Performance Standards.

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

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

facility within the same state, or to a facility in another state.

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

VII. REMEDY REVIEW

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

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

19. Opportunity To Comment. SMC and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be

provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. SMC's Obligation To Perform Further Response Actions.

If EPA selects further response actions for the Site, SMC shall undertake such further response actions to the extent that the reopener conditions in Paragraph 80 or Paragraph 81 (United States' reservations of liability based on unknown conditions or new information) are satisfied. SMC may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 80 or Paragraph 81 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66 (record review).

21. Submissions of Plans. If SMC is required to perform the further response actions pursuant to Paragraph 20, it shall submit a plan for such work to EPA for approval in accordance

with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA in accordance with the provisions of this Amended Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. SMC shall use quality assurance, quality control, and chain of custody procedures for all design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans,") (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to SMC of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Amended Consent Decree, SMC shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the 1995 SOW and/or the 2006 SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without

objection, in any proceeding under this Amended Consent Decree. SMC shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by SMC in implementing this Amended Consent Decree. In addition, SMC shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. SMC shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Amended Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Amended Consent Decree. SMC shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Amended Consent Decree participate in an EPA or EPA-equivalent QA/QC program. SMC shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Amended Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, SMC shall allow split or duplicate samples to be taken by EPA or its authorized representatives. SMC shall notify EPA in advance of any verification sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow SMC to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the SMC's implementation of the Work.

24. SMC shall submit to EPA three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of SMC with respect to the Site and/or the implementation of this Amended Consent Decree unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. Commencing upon the date of lodging of this Amended Consent Decree, SMC agrees to provide the United States and its representatives, including EPA and its contractors, access at

all reasonable times to the Site and any other property to which access is required for the implementation of this Amended Consent Decree, to the extent access to the property is controlled by SMC, for the purposes of conducting any activity related to this Amended Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SMC or its agents, consistent with Section XXIV; and
- g. Assessing SMC's compliance with this Amended Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Amended Consent Decree is owned or controlled by persons other than SMC,

SMC shall use best efforts to secure from such persons access for SMC, as well as for the United States and its representatives including, but not limited to, its contractors, as necessary to effectuate this Amended Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Amended Consent Decree, or within 45 days of the date EPA notifies SMC in writing that additional access beyond that previously secured is necessary, SMC shall promptly notify the United States in writing, and shall include in that notification a summary of the steps SMC has taken to attempt to obtain access. The United States may, as it deems appropriate, assist SMC in obtaining access. SMC shall reimburse the United States, in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs not inconsistent with the NCP incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Amended Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto,

under CERCLA, RCRA and any other applicable statute or regulations.

29. Within thirty (30) days of the effective date of this Amended Consent Decree, SMC shall record a certified copy of the Amended Consent Decree with the Registry of Deeds, Hillsborough County, State of Florida and advise EPA in writing that the task has been accomplished. Within one hundred and twenty (120) days after the Remedial Action under the 2006 ROD is completed, as confirmed by EPA, SMC shall record a certified copy of the Amended Consent Decree and the attached Declaration of Restrictive Covenant (Appendix E), with the Registry of Deeds, Hillsborough County, State of Florida and advise EPA in writing that the task has been accomplished.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Amended Consent Decree, SMC shall submit to EPA and the State three (3) copies of written monthly progress reports that:

- (a) describe the actions which have been taken toward achieving compliance with this Amended Consent Decree during the previous month;
- (b) include a summary of all results of sampling and tests and all other data received or generated by SMC or its contractors or agents in the previous month;
- (c) identify all

work plans, plans and other deliverables required by this Amended Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that SMC has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. SMC shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Amended Consent Decree until EPA notifies SMC pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA, SMC shall also provide briefings for EPA to discuss the progress of the Work.

31. SMC shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that SMC is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), SMC shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 4, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within twenty (20) days of the onset of such an event, SMC shall furnish to Plaintiff a written report, signed by the SMC's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response

thereto. Within thirty (30) days of the conclusion of such an event, SMC shall submit a report setting forth all actions taken in response thereto.

34. SMC shall submit three (3) copies of all plans, reports, and data required by the 1995 SOW and/or the 2006 SOW, the Remedial Action Work Plan for the 1995 SOW and/or the 2006 SOW, or any other approved plans to EPA in accordance with the schedules set forth in such plans.

35. All reports and other documents submitted by SMC to EPA (other than the monthly progress reports referred to above) which purport to document SMC's compliance with the terms of this Amended Consent Decree shall be signed by the Project Coordinator or other authorized representative of SMC.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

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

combination of the above. However, EPA shall not modify a submission without first providing SMC at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), SMC shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), SMC shall, within forty-five (45) days or such longer time as specified by EPA in such notice, correct the

deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 45-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), SMC shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve SMC of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, SMC

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

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

XII. PROJECT COORDINATORS

42. Within forty-five (45) days of execution of this Amended Consent Decree by EPA, SMC and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. SMC's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. SMC's Project Coordinator shall not be an attorney for the SMC in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Amended Consent

Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Amended Consent Decree and to take any necessary response action when she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. EPA's Project Coordinator and SMC's Project Coordinator will meet or confer, at a minimum, on a monthly basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 45 days of entry of this Amended Consent Decree, SMC shall establish and maintain financial security in the amount of \$7,670,000 in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendant; or

(e) A demonstration that SMC satisfies the requirements of 40 C.F.R. Part 264.143(f).

46. If SMC seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Amended Consent Decree, SMC shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If SMC seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Amended Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, SMC shall, within thirty (30) days of receipt of

notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Amended Consent Decree. SMC's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Amended Consent Decree.

47. If SMC can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45 above after entry of this Amended Consent Decree, SMC may, on any anniversary date of entry of this Amended Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. SMC shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, SMC may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

48. SMC may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets

the requirements of this Section. In the event of a dispute, SMC may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action

a. Within ninety (90) days after SMC concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, SMC shall schedule and conduct a pre-certification inspection to be attended by SMC and EPA. If, after the pre-certification inspection, SMC still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and SMC's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Amended Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a

responsible corporate official of SMC or SMC's Project
Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Amended Consent Decree or that the Performance Standards have not been achieved, EPA will notify SMC in writing of the activities that must be undertaken by SMC pursuant to this Amended Consent Decree to complete the Remedial Action and achieve the Performance Standards ("Notice"). Provided, however, that EPA may only require SMC to perform such activities pursuant to this Paragraph to the extent that such activities are consistent either with the "scope of the remedy selected in the 1995 ROD" and/or "the scope of the remedy selected in the 2006 ROD" as those terms are defined in Paragraph 14.b. EPA will set forth in the Notice a schedule for performance of such activities consistent with the Amended

Consent Decree, and the 1995 SOW and/or the 2006 SOW, or EPA may require SMC to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). SMC shall perform all activities described in the Notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

50. Completion of the Work

a. Within ninety (90) days after SMC concludes that all phases of the Work (including O & M), have been fully performed, SMC shall schedule and conduct a pre-certification inspection to be attended by SMC and EPA. If, after the pre-certification inspection, SMC still believes that the Work has been fully performed, SMC shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Amended Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of SMC or SMC's Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Amended Consent Decree, EPA will notify SMC in writing of the activities that must be undertaken by SMC pursuant to this Amended Consent Decree to complete the Work. Provided,

however, that EPA may only require SMC to perform such activities pursuant to this Paragraph to the extent that such activities are consistent either with the "scope of the remedy selected in the 1995 ROD" and/or "the scope of the remedy selected in the 2006 ROD" as those terms are defined in Paragraph 14.b. EPA will set forth in the Notice a schedule for performance of such activities consistent with this Amended Consent Decree, and the 1995 SOW and/or 2006 SOW, or EPA may require SMC to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). SMC shall perform all activities described in the Notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, SMC shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, SMC shall notify EPA Region 4's Emergency Response Hotline at 1-800-424-8802. SMC shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the 1995 SOW and/or 2006 SOW. In the event that SMC fails to take appropriate response action as required by this Section after notice to do so, and EPA takes such action instead, SMC shall reimburse EPA all costs of the response action not inconsistent

with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

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

XVI. REIMBURSEMENT OF RESPONSE COSTS

53. Pursuant to the Consent Decree entered by this Court on July 23, 1998 in this matter, Atkemix paid a total of \$791,998.52, in reimbursement of Past Response Costs incurred by the United States.

54. a. SMC shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send SMC a bill requiring payment that includes a Regionally-prepared cost summary which includes

direct and indirect costs incurred by EPA and its contractors, and a DOJ prepared cost summary which reflects costs incurred by DOJ and its contractors, if any. SMC shall make all payments within forty-five (45) days of SMC's receipt of each bill requiring payment, except as otherwise provided in Paragraph 54.b. SMC shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number A484, and DOJ Case Number 90-11-2-06699/2. SMC shall send the check(s) to:

U.S. Environmental Protection Agency
Region 4 Superfund Receivable
P.O. Box 371099M
Pittsburgh, PA 15251

At the time of payment, SMC shall send notice that payment has been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions), and by e-mail to acctsreceivable.CINWD@epa.gov and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

b. SMC may contest payment of any Future Response Costs under Paragraph 54.a. if it determines that the United States has made an accounting error or if it alleges that a cost

item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within forty-five (45) days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, SMC shall within the forty-five (45) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54.a. Simultaneously, SMC shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Florida and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SMC shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, SMC shall initiate the

Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within fifteen (15) days of the resolution of the dispute, SMC shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 54.a. If SMC prevails concerning any aspect of the contested costs, SMC shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 54.a. SMC shall be disbursed any balance of the escrow account within forty-five (45) days of the termination of Dispute Resolution. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SMC's obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Paragraph 54.a are not made within forty-five (45) days of SMC's receipt of the bill, SMC shall pay Interest on the unpaid balance. The Interest to be paid on response costs due under Paragraph 54.a. shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SMC's 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 SMC's failure to make timely payments under this Section. SMC shall make all payments required by this Paragraph in the manner described in Paragraph 54.a.

XVII. INDEMNIFICATION AND INSURANCE

56. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of SMC as EPA's authorized representative under Section 104(e) of CERCLA. SMC shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SMC, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Amended Consent Decree, including, but not limited to, any claims arising from any designation of SMC as EPA's authorized representative under Section 104(e) of CERCLA. Further, SMC agrees to pay the United States all costs incurred by the United States including, but not limited to, attorneys fees and other

expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SMC, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Amended Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of SMC in carrying out activities pursuant to this Amended Consent Decree. Neither SMC nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SMC written notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 56.a., and shall consult with SMC prior to settling such claim.

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

United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between SMC and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. No later than fifteen (15) days before commencing any on-site Work, SMC shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Amended Consent Decree, SMC shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SMC in furtherance of this Amended Consent Decree. Prior to commencement of the Work under this Amended Consent Decree, SMC shall provide to EPA certificates of such insurance and a copy of each insurance policy. SMC shall resubmit such certificates

and copies of policies each year on the anniversary of the effective date of this Amended Consent Decree. If SMC demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SMC needs to provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Amended Consent Decree, is defined as any event arising from causes beyond the control of SMC, or any entity controlled by SMC, or SMC's contractors, that delays or prevents the performance of any obligation under this Amended Consent Decree despite SMC's best efforts to fulfill the obligation. The requirement that SMC exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not

include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Amended Consent Decree, whether or not caused by a force majeure event, SMC shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Management Division, EPA Region 4, within three (3) days of when SMC first knew that the event might cause a delay. Within five (5) days thereafter, SMC shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SMC's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of SMC, such event may cause or contribute to an endangerment to public health, welfare or the environment. SMC shall include with any notice all available documentation supporting its claim that the delay was

attributable to a force majeure. Failure to comply with the above requirements shall preclude SMC from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. SMC shall be deemed to know of any circumstance of which SMC, any entity controlled by SMC, or SMC's contractors knew or should have known.

61. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Amended Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation unless such other obligations do not accrue until affected obligations are completed. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify SMC in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify SMC in writing of the length of the extension, if any,

for performance of the obligations affected by the force majeure event.

62. If SMC elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, SMC shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that SMC complied with the requirements of Paragraphs 60 and 61, above. If SMC carries this burden, the delay at issue shall be deemed not to be a violation by SMC of the affected obligation of this Amended Consent Decree identified to EPA and the Court and SMC's deadlines under this Amended Consent Decree will be adjusted accordingly.

XIX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Amended Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Amended Consent

Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SMC that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Amended Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, SMC invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by SMC. The Statement of Position

shall specify the SMC's position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within thirty (30) days after receipt of SMC's Statement of Position, EPA will serve on SMC its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within fifteen (15) days after receipt of EPA's Statement of Position, SMC may submit a Reply.

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

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record

under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Amended Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Amended Consent Decree. Nothing in this Amended Consent Decree shall be construed to allow any dispute by SMC regarding the validity of either the 1995 ROD's provisions or the 2006 ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding

upon SMC, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

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

d. In proceedings on any dispute governed by this Paragraph, SMC shall have the burden of demonstrating that the decision of the Superfund Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under

applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of SMC's Statement of Position submitted pursuant to Paragraph 65, the Director of the Superfund Management Division, EPA Region 4, will issue a final decision resolving the dispute. The Superfund Management Division Director's decision shall be binding on SMC unless, within 10 days of receipt of the decision, SMC files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Amended Consent Decree. The United States may file a response to SMC's motion.

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

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the SMC under this Amended Consent Decree, not directly in dispute, unless EPA or the Court agrees

otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Amended Consent Decree. In the event that SMC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as ordered by the Court. In the event that SMC prevails on the disputed issue, stipulated penalties shall not be assessed.

XX. STIPULATED PENALTIES

69. SMC shall be liable for Stipulated Penalties in the amounts set forth in Paragraphs 70 and 71 to the United States for failure to comply with the requirements of this Amended Consent Decree specified below, unless excused under Section XVIII (Force Majeure) or Section XIX (Dispute Resolution).

"Compliance" by SMC shall include completion of the activities under this Amended Consent Decree or any work plan or other plan approved under this Amended Consent Decree identified below in accordance with all applicable requirements of law, this Amended Consent Decree, the 1995 SOW and/or 2006 SOW, and any plans or other documents approved by EPA pursuant to this Amended Consent

Decree and within the specified time schedules established by and approved under this Amended Consent Decree.

70. a. The following Stipulated Penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st thru 14th day
\$3,000	15th thru 30th day
\$5,000	31st thru 45th day
\$6,000	46th day and beyond

b. Failure to timely or adequately comply with the following requirements of this Amended Consent Decree:

1. Submittal and, if necessary, modification of any and all preliminary and final Remedial Action Work Plans for the 1995 ROD and SOW and/or 2006 ROD and SOW;

2. Submittal and, if necessary, modification of any significant deliverables as identified in the EPA approved Remedial Action Work Plans for the 1995 ROD and SOW and/or 2006 ROD and SOW;

3. Implementation of the approved Remedial Action Work Plans for the 1995 ROD and SOW and/or 2006 ROD and SOW;

4. Completion of the Remedial Action required under this Amended Consent Decree or the Amended Consent Decree and the 1995 SOW and/or 2006 SOW;

5. Submittal and, if necessary, modification of the O & M Plan and O & M Manual as required by the 1995 SOW and the 2006 SOW;

6. Establishment of financial assurance;

7. Procurement of Insurance;

8. Hiring Supervising Contractor;

9. Submittal and, if necessary, modification of any Remedial Action Work Plans for the 1995 ROD and SOW and/or 2006 ROD and SOW for further response actions and additional Work pursuant to Sections VI and XI hereof; and

10. Implementation of further response actions and additional Work pursuant to Sections VI and XVI hereof.

71. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraphs 30, 32 and 34:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st thru 14th day
\$1,500	15th thru 30th day
\$2,000	31st thru 45th day
\$3,000	46th day and beyond

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SMC of any deficiency; (2) with respect to a decision by the Director of the Superfund Management Division, EPA Region 4, under Paragraph 66.b. or 67.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SMC's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate

penalties for separate violations of this Amended Consent Decree.

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

74. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of SMC's receipt from EPA of a demand for payment of the penalties, unless SMC invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Region 4, Attn: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #04-7W, the DOJ Case Number 90-11-2-1227, and the name and address of the party making payment. Copies of check(s) paid pursuant to this

Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

75. The payment of penalties shall not alter in any way SMC's obligation to complete the performance of the Work required under this Amended Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

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

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

c. If the District Court's decision is appealed by any Party, SMC shall pay all accrued penalties determined by the District Court to be owing to the United States into an

interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SMC to the extent that they prevail.

77. a. If SMC fails to pay Stipulated Penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. SMC shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73.

b. Nothing in this Amended Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SMC's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein. Notwithstanding the foregoing, in the event EPA

assumes performance of a portion or all of the Work pursuant to paragraph 84 of Section XXI (Covenants Not to Sue), EPA reserves the right to seek statutory civil penalties pursuant to Section 122(1) of CERCLA. EPA, also reserves the right to seek civil penalties pursuant to Section 122(1) CERCLA in the case of a willful violation of the Amended Consent Decree.

78. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of Stipulated Penalties that have accrued pursuant to this Amended Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

79. In consideration of the actions that will be performed and the payments that will be made by SMC under the terms of the Amended Consent Decree, and except as specifically provided in Paragraphs 80,81, and 83 of this Section, the United States covenants not to sue or to take administrative action against SMC pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. With respect to Past Response Costs the covenants not to sue by the United States took effect upon receipt by EPA of payments made pursuant to Paragraph 53.a of the Consent Decree entered on July 23, 1998. With respect to Future Response Costs, these covenants not to sue shall take effect upon receipt

by EPA of the payments required by Paragraphs 53.b and 54 of this Amended Consent Decree. With respect to all other liability under Sections 106 and 107 of CERCLA, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by SMC of its obligations under this Amended Consent Decree. These covenants not to sue extend only to the SMC and do not extend to any other person.

80. United States' Pre-certification reservations.

Notwithstanding any other provision of this Amended Consent Decree, the United States reserves, and this Amended Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel SMC (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

81. United States' Post-certification reservations.

Notwithstanding any other provision of this Amended Consent Decree, the United States reserves, and this Amended Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel SMC (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the

Remedial Action is not protective of human health or the environment.

82. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions known to EPA, as of the date the 2006 ROD was signed, and set forth in the 2006 ROD and the administrative record supporting the 2006 ROD. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of the Completion of the Remedial Action and set forth in the 1995 ROD and 2006 ROD and the administrative records supporting the 1995 and 2006 RODs, as well as the administrative record developed post-2006 ROD, or any information received by EPA pursuant to the requirements of this Amended Consent Decree prior to Certification of Completion of the Remedial Action.

83. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 79. The United States reserves, and this Amended Consent Decree is without prejudice to, all rights against SMC with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by SMC to meet a requirement of this Amended Consent Decree;

(2) liability arising from the past, present, future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for future disposal of Waste Material at the Site, other than as provided in the 1995 ROD or 2006 ROD, the Work, or otherwise ordered by EPA;

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

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

(7) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the 1995 SOW and/or the 2006 SOW and Related Work Plans).

84. Work Takeover In the event EPA determines that SMC has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary after having provided SMC with written notice thirty (30) days prior to its intention to perform the Work. SMC may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that SMC shall pay pursuant to Section XVI (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Amended Consent Decree, the United States retains all authority and reserve[s] all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SMC

86. Covenant Not to Sue. Subject to the reservations in Paragraph 87, SMC hereby covenants not to sue and agrees not to

assert any claims or causes of action against the United States with respect to the Site, past response actions, and Past and Future Response Costs as defined herein or this Amended Consent Decree and/or the Amended Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

87. SMC reserves, and this Amended Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act

or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of SMC's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

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

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

89. Nothing in this Amended Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Amended Consent Decree. The

preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

90. The Parties agree, and by entering this Amended Consent Decree this Court finds, that SMC is entitled, as of the effective date of this Amended Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Amended Consent Decree.

91. SMC agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Amended Consent Decree, SMC will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

92. SMC also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Amended Consent Decree, it will notify in writing the

United States within 10 days of service of the complaint on it. In addition, SMC shall notify the United States 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.

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

XXIV. ACCESS TO INFORMATION

94. SMC shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Amended Consent Decree,

including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. SMC shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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

b. SMC may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If SMC asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by SMC. However, no documents, reports or other information created or generated pursuant to the requirements of the Amended Consent Decree shall be withheld on the grounds that they are privileged.

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

XXV. RETENTION OF RECORDS

97. Until 10 years after SMC's receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV

(Certification of Completion of the Work), SMC shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after SMC's receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion), SMC shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

98. At the conclusion of this document retention period, SMC shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, SMC shall deliver any such records or documents to EPA. SMC may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If SMC asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document,

record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by SMC. However, no documents, reports or other information created or generated pursuant to the requirements of the Amended Consent Decree shall be withheld on the grounds that they are privileged.

99. SMC 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, documents 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 pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

100. Whenever, under the terms of this Amended Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another,

it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Amended Consent Decree with respect to the United States, EPA, and SMC, respectively.

As to the United States:

Bruce Gelber
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-1227

As to EPA:

Franklin Hill
Acting Director, Superfund Division
U.S. EPA Region 4
Atlanta Federal Center
100 Alabama Street, SW
Atlanta Georgia 30303

and

Julie Santiago-Ocasio
Remedial Project Manager
U.S. EPA Region 4
Atlanta Federal Center
100 Alabama Street, SW

Atlanta Georgia 30303

As to SMC:

Robert Shay
Settling Defendant's Project Coordinator
Stauffer Management Company, P.O.Box 15438
Wilmington, DE 198500-5438

Michael P. Kelly, Esquire
General Counsel - Stauffer Management Company LLC
McCarter & English, LLP
Renaissance Centre
405 N. King Street, 8th Floor
Wilmington, Delaware 19801

XXVII. EFFECTIVE DATE

101. The effective date of this Amended Consent Decree shall be the date upon which the Amended Consent Decree is entered by the Court.

XXVIII. RETENTION OF JURISDICTION

102. This Court retains jurisdiction over both the subject matter of this Amended Consent Decree and SMC for the duration of the performance of the terms and provisions of this Amended 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 Amended Consent Decree, or to effectuate or enforce compliance with its terms, or to

resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

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

"Appendix A" is the 1995 ROD.

"Appendix B" is the 2006 ROD.

"Appendix C" is the 1995 SOW.

"Appendix D" is the 2006 SOW.

"Appendix E" is the Declaration of Restrictive Covenant.

XXX. COMMUNITY RELATIONS

104. SMC has already implemented a community relations plan relative to the 1995 ROD and 1995 SOW, and shall continue to implement that plan, as approved and/or modified by EPA relative to both the 1995 ROD and SOW and the 2006 ROD and SOW. EPA will continue to determine the appropriate role for SMC under the Plan. SMC shall also continue to cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, SMC shall continue to participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

106. Except as provided in Paragraph 14 ("Modification of the 1995 SOW and/or the 2006 SOW or related Work Plans"), no material modifications shall be made to the 1995 SOW or 2006 SOW without written notification to and written approval of the United States, SMC, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the 1995 SOW or 2006 SOW that do not materially alter that document may be made by written agreement between EPA and SMC, after providing the State with a reasonable opportunity to review and comment on the proposed modification.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

108. The Amended Consent Decree shall be lodged with this Court for a period of not less than thirty (30) days for public

notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. Section 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Amended Consent Decree disclose facts or considerations which indicate that the Amended Consent Decree is inappropriate, improper, or inadequate. SMC consents to the entry of the Amended Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

110. Each representative of SMC and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice who sign the Amended Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of the Amended Consent Decree and execute and legally bind such party to the Amended Consent Decree.

111. SMC agrees not to oppose entry of the Amended Consent Decree by this Court or to challenge any provision of the Amended Consent Decree unless the United States has notified SMC in writing that it no longer supports entry of the Amended Consent Decree.

112. SMC agrees to identify on the signature page attached to the Amended Consent Decree, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of SMC with respect to all matters arising under or relating to the Amended Consent Decree. SMC also agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, and any applicable local rules of this Court including, but not limited to, service of a summons, as regards any matter arising under the Amended Consent Decree.

SO ORDERED THIS _____ DAY OF _____, 2007.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Amended Consent Decree relating to the Stauffer Chemical Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date:

~~ELLEN M. MAHAN~~
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources
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U.S. Department of Justice
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~~CHERYL L. SMOUT~~
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Atlanta, Georgia 30303

Atlanta, Georgia 30303

THE UNDERSIGNED PARTY enters into this Amended Consent Decree relating to the Stauffer Chemical Superfund Site.

FOR STAUFFER MANAGEMENT COMPANY LLC
TAMPA, FLORIDA

Date: 10/25/07 ✓

MICHAEL P. KELLY
Attorney for SMC

AUTHORIZED AGENT FOR SERVICE OF PROCESS

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